Title 30

CORPORATIONS AND PARTNERSHIPS

Chapters:

Chapter 01

GENERAL CORPORATION LAW

Sections:

I. General Provisions

II. Incorporation

III. Powers and Prohibitions

I. General Provisions

30.0101 Definitions.

As used in this chapter and Chapters 30.02 and 30.03:

(a) "Articles of Incorporation" includes both the original articles of incorporation and any and all amendments thereto, except in those instances where the context expressly refers to the original articles of incorporation only.

(b) "Corporation" unless otherwise expressly provided refers only to a domestic corporation.

(c) "Directors" includes persons designated in the articles as such and persons designated, elected or appointed by any other name or title to act as directors.

(d) "Foreign corporation" means a corporation for profit organized under laws other than the laws of American Samoa.

(e) "Governor", "Attorney General", "Treasurer", and "Territorial Registrar" mean, respectively, the Governor of American Samoa, the Attorney General of American Samoa, the Treasurer of American Samoa, and the Territorial Registrar of American Samoa, or their authorized representatives.

(f) "Incorporator" includes each person signing the articles of incorporation.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0102 Certificate of incorporation-Change by Governor.

The certificate of incorporation of any corporation hereafter organized under the authority of the government is at all times subject to forfeiture or revocation by the Governor for misuse or nonuse, and may be at any time altered, abridged or set aside by law or executive order of the Governor; and every certificate of incorporation obtained, used or enjoyed by any corporation may be regulated, cancelled, withheld, or subjected to conditions upon the enjoyment thereof, whenever the Governor deems it necessary for the public good. The foregoing shall apply to corporations both for profit and not for profit in American Samoa.

History: 1962, PL 7-20.

30.0103 Review of decisions of Governor.

(a) A party aggrieved by an adverse decision of the Governor rendered pursuant to this chapter may, within 30 days from the date of the decision, appeal to the Secretary of the Interior. The appeal shall be written and shall set forth under oath all the facts of the decision.

(b) The Governor shall have 30 days from the filing of the appeal within which to file a reply under oath.

(c) The Secretary shall render a decision 30 days after he has received both the appeal and the reply. If the Secretary fails to make a decision within 30 days after he has received both the

appeal and the reply, the decision of the Governor shall be final.

(d) All decisions as to matters of fact by the Governor shall be conclusive unless clearly erroneous.

(e) In any case where a corporate charter is revoked by an adverse decision of the Governor, an aggrieved party may carry on its business despite such adverse decision if the aggrieved party files an appeal to the Secretary of the Interior within 10 days of the adverse decision of the Governor.

History: 1962, PL 7-20; readopted 1980, PL 16-48 § 1; 1982, PL 17-31 § 1.

Reviser's Comments: The law dealing with alienation of land contained in the A.S.C.A., as recodified by the Legislative Reference Bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-48 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

30.0104 Name of corporation to be distinct.

(a) The name of each corporation must be such as to distinguish it upon the records of the Territorial Registrar from the name of any other corporation.

(b) The name of each corporation must contain the word "corporation, "incorporated", or "limited", or an abbreviation of one of these words.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0105 Principal place of business.

(a) Any corporation organized under the laws of American Samoa must fix upon, and must designate in its articles of incorporation, its principal place of business, which must be in American Samoa. The principal place of business must not be changed except through an amendment to its articles of incorporation.

(b) The principal place of business must be in charge of an agent of the corporation and must be the place where it keeps its corporate books of account, a record of its proceedings, and its stock and transfer books, and hold its stockholders meetings.

(c) If a corporation organized under the laws of American Samoa does not have its principal place of business in charge of an agent, or if the agent is not found in American Samoa, service of process may be made upon the corporation through the Treasurer by sending the original and 2 copies to him. He shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process to the clerk of the court in which the suit is pending as well as send a copy thereof by registered mail to the corporation at the address of its principal place of business.

History: 1962, PL 7-20.

30.0106 Incorporation and stock increase fees.

(a) Corporations organized for a period of years shall pay the Treasurer, before a certificate of incorporation is issued, a fee of $25 together with a recording fee of 25 cents per page, and, for all authorized stock in excess of $10,000, an additional fee of $1 per 1000.

(b) Corporations organized to exist perpetually shall pay to the Treasurer, before a certificate of incorporation is issued, a fee of $100 together with a recording fee of 25 cents per page, and, for all authorized stock in excess of $10,000, an additional fee of $1 per 1000.

(c) Should any corporation increase its capital stock, it shall pay to the Treasurer a recording

fee of 25 cents per page and, in addition, a fee of $1 per 1000 of such increase.

II. Incorporation

30.0110 Who may incorporate.

Three or more persons of full age, at least 2/3 of whom must be nationals of the United States and at least one a resident of American Samoa, may form a corporation for any lawful business, but such incorporation confers no power not possessed by natural persons, except as otherwise provided in this chapter.

History: 1962, PL 7-20.

30.0111 Articles of incorporation-Required.

Before commencing any business except their own organization, the incorporators must first adopt articles of incorporation, which must be signed and acknowledged by the incorporators.

History: 1962, PL 7-20; 1968, PL 10-69.

30.0112 Articles of incorporation-Approval and endorsement.

The articles of incorporation shall then be forwarded to the Treasurer of American Samoa via the Attorney General. The Treasurer shall then forward the articles to the Governor for approval. If approved by the Governor, they shall be forwarded to the Territorial Registrar for him to record in a book kept therefor, and the Territorial Registrar shall endorse thereon the book and the page where the record will be found. Upon such recordation, the Treasurer shall issue a certificate of incorporation. No corporation shall be formed or do business without prior approval by the Governor.

History: 1962, PL 7-20; 1968, PL 10-69.

30.0113 Articles of incorporation-Filing.

When articles of incorporation and amendments to articles of incorporation of domestic or foreign corporations are presented to the Treasurer for the purpose of being filed, and the Treasurer is satisfied, after consultation with the Attorney General, that they are in proper form to meet the requirements of law and that their plan for doing business is honest and lawful, he shall file them; but if he is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is unlawful against public policy, or that their plan for doing business is dishonest or unlawful, he shall forward them to the Governor, who shall have the power to refuse to file them. The fact of filing shall not confer corporate status without the approval of the Governor.

History: 1962, PL 7-20; 1968, PL 10-69.

30.0114 Articles of incorporation-Contents.

Articles of incorporation shall contain:

(1) the name of the corporation and its principal place of business in American Samoa;

(2) the objects for which it is formed, such objects to be stated with specificity;

(3) the amount of authorized capital stock, the classes of stock authorized, and the par value and conditions of each class and the time when and conditions under which it is to be paid;

(4) the time of commencement of existence of the corporation;

(5) the names and addresses of the incorporators and the officers or persons its affairs are to

be conducted by, and the time when and manner in which such officers will be elected;

(6) a statement that private property of the stockholders is to be exempt from corporate debts;

(7) the manner in which the articles may be amended.

History: 1962, PL 7-20; 1968, PL 10-69.

Case Notes:

Shareholders' immunity for corporate debts is absolute unless circumstances justify disregarding the corporate entity to prevent abuse of corporate privileges by an individual or another corporation having domination or control; in such cases, the issue is whether limiting corporate privileges will accomplish justice and defeat fraud or other unfairness in a court's resolution of the issues before it. A.S.C.A. § 30.0114(6). Amerika Samoa Bank v. Adams, 22 A.S.R.2d 38 (1992).

30.0115 Articles of incorporation-Additional provisions.

The articles of incorporation may also contain any provisions which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders or any class of the stockholders: provided, that such provisions are not contrary to the laws of American Samoa.

History: 1962, PL 7-20; 1968, PL 10-69.

30.0116 Beginning and duration of corporate existence.

(a) Upon executing the articles of incorporation and causing the same to be filed, and the same having been recorded and the statutory fees provided for having been paid, the persons so associating, and their successors and assigns, shall from the date of the issuance of the certificate of incorporation be and constitute a body corporate, by the name set forth in the certificate subject to dissolution as provided in this chapter.

(b) The duration of a corporation, if not limited in the articles of incorporation, is perpetual.

History: 1962, PL 7-20.

30.0117 Failure to comply with organization requirements.

A bad-faith failure to substantially comply with the requirements for the organization of a corporation renders the individual property of the stockholder liable for corporate debts.

History: 1962, PL 7-20.

30.0118 Organizational meeting-Notice.

(a) After acceptance for record of the articles of incorporation, an organizational meeting of the incorporators or subscribers, or both named in the articles of incorporation shall be held, at the call of a majority thereof, for the purpose of adopting bylaws and electing directors and for the transaction of such other business as may properly come before the meeting.

(b) The persons calling the meeting shall give not less than 3 days notice thereof in writing to each incorporator or subscribers, or both. Such notice shall state the time and place of the meeting.

(c) Notice may be waived in writing by a majority of the incorporators or subscribers, or both.

History: 1962, PL 7-20; amd 1979, PL 16-40.

Amendments: 1979 Amended section generally.

30.0119 Adoption and change of bylaws-Posting.

The original bylaws of a corporation organized under this chapter may be adopted by the incorporators. Thereafter, the power to make, alter, or repeal bylaws is in the stockholders, except that any corporation may, in the articles of in-corporation, confer that power upon the directors. A copy of the bylaws of the corporation, with the names of all of its officers, must be posted in its principal place of business in American Samoa and be subject there to public inspection.

History: 1962, PL 7-20.

Case Notes:
Impiledly requires issuance of stock certificates. Impliedly requires adoption of bylaws.
Donald Export Trading Ca. v. Toko Groceries Distributors, Inc., ASR (1979).

30.0120 Amendments-Procedure.

(a) Any corporation operating under this chapter may, when and as desired, amend its articles of incorporation by:

(1) additions to its corporate powers and purposes, or diminution thereof, or both, or by substitution of other powers and purposes, in whole or in part, for those prescribed by its articles of incorporation;

(2) increasing or decreasing its authorized capital stock or reclassifying the same, by changing the number, par value, designations, preference, or relative, participating, optional or other special rights of the shares or the qualifications, limitations or restrictions of such rights;

(3) changing its corporate title;

(4) making any other change or alteration in its articles of incorporation that may be desired.

(b) All such changes or alterations may be effected by one certificate of amendment; provided, that any articles of incorporation as so amended, changed, or altered may contain only such provisions as it would be lawful and proper to insert in original articles of incorporation made at the time of making such amendments, and the procedures set forth in 30.0111 through 30.0115 must be followed with respect to the filing, approval by the Governor and recordation of any such amendment.

(c) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

History: 1962, PL 7-20, 2000, PL 26-23.

30.0121 Voluntary dissolution.

(a) A corporation may be dissolved in accordance with the provisions of its articles or when 2/3 in interest of all the stock outstanding votes in favor of a dissolution at a stockholders meeting called for that purpose.

(b) Corporations whose certificate of incorporation expires by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs.

History: 1962, PL 7-20.

III. Powers and Prohibitions

30.0130 Corporate powers.

Every corporation organized under this chapter has power to:

(1) have perpetual succession unless a limited period of duration is stated in the articles of incorporation;

(2) sue and be sued by its corporate name;

(3) have a common seal, which it may alter at its pleasure;

(4) render the interests of the stockholders transferable;

(5) exempt the private property of its members from liability for corporate debts, except as otherwise declared;

(6) make contracts and to acquire and transfer property as provided in 30.0131, possessing the same powers in such respects as natural persons:

(7) establish bylaws and make all rules and regulations necessary for the management of its affairs.

History: 1962, PL 7-20.

Case Notes:

Even implied tenancy is precluded when a corporation is involved. Kaleopa v. Nia-Maria & Co., Inc., ASR (1978).

30.0131 Transfers of land.

No corporation or foreign corporation may buy or acquire any interest in land unless the transaction is approved in writing by the Governor and recorded by the Territorial Registrar, and no such acquisition or transfer may be of any effect until so approved and recorded. Notwithstanding the foregoing, any acquisition of land or any interest therein is subject to the restrictions and limitations prescribed by the provisions of 1.0101 et seq. and 1.0201 et seq. and other applicable laws, respecting land or interests therein. For the purposes of this section, a corporation is without race.

History: 1962, PL 7-20; readopted 1980, PL 16-88 § 2; 1982, PL 17-31 § 2.

Reviser's Comment: The law dealing with alienation of land contained in the A.S.C.A. as recodified by the Legislative Reference Bureau had been questioned as to whether the requirements of Art I, § 3 and Art. II § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

Case Notes:

Territorial statute requiring certain transactions to be "approved in writing by the Governor" was not violated when a Governor signed a lease document and then authorized members of his staff to make certain revisions to the document before it left his office, even though the Governor did not sign the document a second time after the changes were made. A.S.C.A. § 30.0131. American Samoa Government v. Samoa Aviation, Inc., 11 A.S.R.2d 144 (1989).

30.0132 Ultra vires acts-Suits.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation may be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the authorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract,

as the case may be, compensation for such loss or damage sustained by them as may result from the action of the court in setting aside and enjoining the performance of the contract;

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

History: 1962, PL 7-20.

30.0133 Corporation's acquisition of its own shares.

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

History: 2000, PL 26-23.

IV. Directors and Officers

30.0140 Directors-Number.

(a) The business of every corporation organized under the provisions of this chapter shall be managed by a Board of Directors, except as otherwise provided in this chapter or the corporation's articles of incorporation.

(b) The number of directors which constitutes the whole board must be such as is fixed by, or in the manner provided in, the bylaws, but in no case may the number be less than 3. Directors need not be stockholders unless so required by the articles.

History: 1962, PL 7-20.

30.0141 Directors-Election-Term-Vacancies.

(a) The Directors of every corporation shall be elected at the annual meeting of the stockholders, which shall be held at the time and place provided for by the bylaws, by a plurality of the votes cast at such election.

(b) The certificate of incorporation may provide that the directors be divided into 2 or more classes whose terms of office shall respectively expire at different times, but no term may continue longer than 3 years and at least 1/4 of the directors shall be elected annually.

(c) Vacancies in the Board of Directors shall be filled by the Directors remaining in office as may be provided in the bylaws unless it is otherwise provided in the certificate of incorporation or an amendment thereof.

(d) An increase in the number of directors creates vacancies for the purpose of this section.

History: 1962, PL 7-20.

Case Notes:

A statutory provision that corporate directors be elected at the annual meeting does not preclude the shareholders from removing members of the board of directors and holding a special election to elect replacement directors. A.S.C.A. § 30.0141(a). Lutali v. Foster, p 39.

30.0142 Directors-Voting-Proxies.

In all elections for Directors of any company operating or organized under this chapter, every stockholder has the right to vote, in person or by proxy, the number of shares of stock owned by

him, for as many persons as there are directors to be elected, or to cumulate the votes and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock equals, or to distribute them upon the same principles among as many candidates as he think fits, and such directors may not be elected in any other manner.

History: 1962, PL 7-20.

Case Notes:

Choice of which one of several available methods of voting to use is up to shareholder, not up to corporate management. Fa'atiliga v. Lutali, 4 A.S.R.2d 1 (1987).

Territorial statute providing that shareholders may either cast all his votes for one candidate for corporate office or divide his votes among as many candidates as there are positions did not leave corporate management free to choose which of these two methods would be followed; rather, it required that each shareholder be given the option of choosing how to cast his votes. A.S.C.A. § 30.0142. Fa'atiliga v. Lutali, 4 A.S.R.2d 1 (1987).

30.0143 Officers-Term.

(a) Every corporation operating or organized under this chapter shall have a president, vice-president and treasurer, who is chosen by the Directors or stockholders as the bylaws may direct. They hold their offices until their successors are chosen and qualified.

(b) The corporation may have such other officers, agents, and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the bylaws or determined by the Board of Directors, and the corporation may secure the fidelity of any or all of such officers by bond or otherwise.

History: 1962, PL 7-20.

30.0144 Liability of directors and officers.

If the Directors or officers of any corporation operating or organized under the provisions of this chapter knowingly cause to be published or give out any written statement or report of the condition or business of the corporation that is false in any material respect, the officers and directors causing such report or statement to be published or given out, or assenting thereto, are jointly and severally individually liable to the corporation and creditors for any loan or damage arising therefrom.

History: 1962, PL 7-20.

V. Stock and Dividends

30.0150 Amounts-Payment.

(a) The amount of authorized capital stock of any corporation organized under this chapter may not be less than $2,000.

(b) The amount of paid-in capital with which any such corporation shall commence business may not be less than $1,000.

(c) No corporation may be permitted to issue stock except for an equivalent in money or labor done, or property actually received and applied to the purpose for which the corporation was created; and neither labor nor property may be received in payment of stock at a greater value than the actual value at the time the labor was done or property delivered, and all fictitious increases of stock or indebtedness are void.

History: 1962, PL 7-20.

Case Notes:

Alleged failings of corporation are nor specifically required activities under rather sparse corporate law, but go to

issue disregarding corporate existence. Donald Export Trading Ca. v. Toko Groceries Distributors, Inc. ASR (1979).

30.0151 Replacement of lost stock certificates.

The Directors of a corporation shall have the power in the bylaws to provide for the issuance of new certificates of stock whenever any previously held certificates have been lost or destroyed.

History: 1962, PL 7-20.

30.0152 Transfer of stock certificates.

(a) The Directors of a corporation have the power to provide for the transfer of stock certificates.

(b) The transfer of shares is not valid, except as between the parties thereto, until regularly entered upon the books of the corporation, showing the name of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such may not exempt the person making it from any liability of the corporation created prior thereto adequate deductions for deprecations and obsolescence, and exclusive of any amounts resulting from unrealized appreciation or an upward revaluation of assets.

(b) No dividends may be paid or declared at a time when:

(1) the corporation is unable to pay its debts as they mature or when the payment declaration of the dividend would render the corporation unable to pay its debts as they mature;

(2) its net assets are less than its stated capital or when the payment or declaration thereof would reduce its net assets below its stated capital.

History: 1962, PL 7-20.

30.0153 Dividends-Source-Prohibited payments.

(a) A corporation may, by resolution of its Board of Directors, declare and pay dividends in cash or property only out of earned surplus; earned surplus being defined as the remaining amount of accumulated net income, after

History: 1962, PL 7-20.

30.0154 Liability for dividends.

The following persons are liable for 6 years from the date of any dividend declared or paid (whichever is the later date) in violation of subsection (b) of 30.0153:

(1) any Directors who willfully or negligently approve such payment. The liability shall be joint and several, but shall be limited to the amount of loss sustained by the corporation, its creditors or shareholders, up to the limit of the illegal dividend or dividends. Good faith reliance on the books of the corporation shall be a defense;

(2) any shareholder, to the extent of the dividend received by him. If the corporation was already insolvent at the time of such payment, the good faith of the shareholder shall be irrelevant. When the corporation is solvent at the time of the payment of the dividend, good faith shall be a defense.

History: 1962, PL 7-20.

30.0155 Liability-Enforcement.

The following may enforce the liability imposed by 30.0154:

(1) the corporation, through its Directors;
(2) any person who by operation of law succeeds to the right or property of the corporation;
(3) any shareholder who first makes a demand on the Directors that suit be instituted by the corporation or who alleges that the demand would be useless;
(4) persons who were creditors at the time of the illegal dividend or dividends.

History: 1962, PL 7-20.

30.0156 Extent of liability.

Nothing in this chapter or in the articles of incorporation exempts the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual.

History: 1962, PL 7-20.

VI. Books, Accounts, and Reports

30.0160 Required books and accounts-Right of inspection.

(a) Every corporation organized under the laws of American Samoa shall keep at its office m American Samoa correct books of account of all of its business and transactions, and a stock book containing the names of all persons who are stockholders of the corporation, their interests, the amount paid on their shares and all transfers thereof.

(b) Any corporation organized under the laws of American Samoa shall be subject to the right of the government, through its agents designated by the Governor, or any person who is a stockholder of record of any such corporation, to call for the production of and to examine, in person or by duly authorized agent or attorney, at any reasonable time or times and for proper purpose, the stock records, minutes and records of stockholders meetings, and the books and records of accounts, and to make extracts therefrom.

History: 1962, PL 7-10.

30.0161 Keeping false books or accounts a misdemeanor.

The intentional keeping of false books or accounts by any officer, agent, or employee of a corporation, or by anyone having the duty to see that the books and accounts are correctly kept, is a misdemeanor.

History: 1962, PL 7-10.

30.0162 Annual report-Contents-Exemptions from filing.

(a) Any corporation organized under the laws of American Samoa, or under the laws of any other territory, or any state or foreign country, which has complied with the laws of American Samoa relating to the organization of corporations and has secured a certificate of incorporation or permit to transact business in American Samoa, and any corporation that may hereafter be organized and become incorporated under the laws of American Samoa and secures a certificate of incorporation or permit to transact business in American Samoa, and any foreign corporation that may hereafter comply with the laws of American Samoa relating to foreign corporations and secure a permit to transact business within American Samoa must between 1 July and 1 August of each year, make an annual report to the Treasurer in such form as the Treasurer may prescribe, upon a blank to be prepared by the Treasurer for that purpose, and containing the following

information:

(1) the name and post office address of the corporation:

(2) the amount of capital stock authorized;

(3) the amount of capital stock actually issued and outstanding;

(4) the par value of such stock, designating whether preferred or common stock, and the amount of each kind;

(5) the names and post office addresses of its officers and directors and whether any change of place and business has been made during the year previous to making said report;

(6) the indebtedness of the corporation as of the end of the year or within 75 days prior to the filing of the report, as well as such other in-formation as will show with reasonable certainty the financial conditions of the corporation.

(b) A corporation may file an affidavit by its president or vice-president and its secretary or assistant secretary stating that during the preceding year it has transacted no business in American Samoa and intends to transact no business in the future, whereupon, after payment of any fees due, it must have its certificate of authority canceled and be relieved of any obligation to file annual reports.

History: 1962, PL 7-20.

30.0163 Penalty for failure to file report.

Any corporation or foreign corporation failing to file the report required by 30.0162 is guilty of an infraction and shall be sentenced accordingly. This penalty may be recovered by the government in an action brought by the Attorney General.

History: 1962, PL 7-20, amd 1980, PL 16-90 § 39.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

VII. MERGER AND SHARE EXCHANGE

30.0170 Merger.

(a) One or more corporations may merge into another corporation if the Board of Directors of each corporation adopts and its shareholders approve a plan of merger.

(b) The plan of merger must set forth:

(1) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) the terms and conditions of the merger; and

(3) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) amendments to the articles of incorporation of the surviving corporation; and

(2) other provisions relating to the merger.

History: 2000, PL 26-23.

30.0171 Share exchange.

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the Board of Directors of each corporation adopts and its shareholders approve the exchange.

(b) The plan of exchange must set forth:

(1) the name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) the terms and conditions of the exchange;

(3) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

History: 2000, PL 26-23.

30.0172 Action on plan.

(a) After adopting a plan of merger or share exchange, the Board of Directors of each corporation party to the merger, and the Board of Directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) the Board of Directors must recommend the plan of merger or share exchange to the shareholders, unless the Board of Directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) the shareholders entitled to vote must approve the plan.

(c) The Board of Directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting no fewer than 5 nor more than 20 days before the meeting date. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the Board of Directors (acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

History: 2000, PL 26-23.

30.0173 Merger of subsidiary.

(a) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The Board of Directors of the parent shall adopt a plan of merger that sets forth:

(1) the names of the parent and subsidiary; and

(2) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the treasurer for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent.

History: 2000, PL 26-23.

30.0174 Articles of merger or share exchange.

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the Board of Directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the treasurer for filing articles of merger or share exchange setting forth:

(1) the plan of merger or share exchange;

(2) if shareholder approval was not required, a statement to that effect;

(3) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

History: 2000, PL 26-23.

30.0175 Effect of merger or share exchange.

(a) When a merger takes place:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(3) the surviving corporation has all liabilities of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(5) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(6) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other

property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under this chapter.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under this chapter.

History: 2000, PL 26-23.

30.0176 Merger or share exchange with foreign corporation.

(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporation if:

(1) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) the foreign corporation complies with section 30.0174 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) each domestic corporation complies with the applicable provisions of sections 30.0170 through 30.0173 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, section 30.0174.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the foreign acquiring corporation of a share exchange is deemed:

(1) to appoint the treasurer as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) to agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under Chapter 30.0180 et seq.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

History: 2000, PL 26-23.

VIII. DISSENTERS' RIGHTS

I. Right to Dissent and Obtain Payment for Shares

30.0180 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(a) "Corporation", domestic or foreign, means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(b) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 30.0181 and who exercises that right when and in the manner required by sections 30.0180 through 30.0198.

(c) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(e) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(f) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(g) "Shareholder" means the record shareholder or the beneficial shareholder.

History: 2000, PL 26-23.

30.0181 Right to dissent.

(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(1) consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 30.0172 or the articles of incorporation and the shareholder is entitled to vote on the merger or (ii) if the corporation is a subsidiary that is merged with its parent under section 30.0173;

(2) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(3) consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(4) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it;

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash; or

(5) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for the shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this chapter may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History: 2000, PL 26-23.

30.0182 Dissent by nominees and beneficial owners.

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) he submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) he does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

History: 2000, PL 26-23.

II. Procedure for Exercise of Dissenters' Rights-Judicial Appraisal of Shares

30.0190 Notice of dissenters' rights.

(a) If proposed corporate action creating dissenters' rights under section 30.0181 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(b) If corporate action creating dissenters' rights under section 30.0181 is taken without a vote of shareholders, the corporation shall notify in writing al shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 30.0192.

History: 2000, PL 26-23.

30.0191 Notice of intent to demand payment.

(a) If proposed corporate action creating dissenters' rights under section 30.0181 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights (1) must deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated and (2) must not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this chapter.

History: 2000, PL 26-23.

30.0192 Dissenters' notice.

(a) If proposed corporate action creating dissenters' rights under section 30.0181 is authorized at a shareholders meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 30.0191.

(b) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must:

(1) state where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) supply a form for demanding payment that includes the date of the first announcement to new media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;

(4) set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is delivered; and

(5) be accompanied by a copy of this chapter.

History: 2000, PL 26-23.

30.0193 Duty to demand payment.

(a) A shareholder sent a dissenters' notice described in section 30.0192 must demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 30.0192(b)(3), and deposit his certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under section (a) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is entitled to payment for his shares under this chapter.

History: 2000, PL 26-23.

30.0194 Share restrictions.

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 30.0196.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

History: 2000, PL 26-23.

30.0195 Payment.

(a) Except as provided in section 30.0197, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 30.0193 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(b) The payment must be accompanied by:

(1) the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statement, if any;

(2) a statement of the corporation's estimate of the fair value of the shares;

(3) an explanation of how the interest was calculated;

(4) a statement of the dissenter's right to demand payment under section 30.0198; and

(5) a copy of this chapter.

History: 2000, PL 26-23.

30.0196 Failure to take action.

(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 30.0192 and repeat the payment demand procedure.

History: 2000, PL 26-23.

30.0197 After acquired shares.

(a) A corporation may elect to withhold payment required by section 30.0195 from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 30.0198.

History: 2000, PL 26-23.

30.0198 Procedure if shareholder dissatisfied with payment or offer.

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate (less any payment under section 30.0195), or reject the corporation's offer under section 30.0197 and demand payment of the fair value of his shares and interest due, if:

(1) the dissenter believes that the amount paid under section 30.0195 or offered under section 30.0197 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) the corporation fails to make payment under section 30.0195 within 60 days after the date set for demanding payment; or

(3) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) within 30 days after the corporation made or offered payment for his shares.

History: 2000, PL 26-23.

30.0199 Court action-Court costs and counsel fees.

(a) If a demand for payment under section 30.0198 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding with the 60 day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the Trial Division of the High Court of American Samoa.

(c) The corporation shall make all dissenters, whether or not residents of this Territory, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail to his or her last known address.

(d) The jurisdiction of the Trial Division of the High Court under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation or (2) for the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under section 30.0197.

(f) The court in an appraisal proceeding commenced under section 30.0199 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amount the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 30.0198.

(g) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 30.0190 through 30.0198; or

(2) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

History: 2000, PL 26-23.

Chapter 02

ELEEMOSYNARY CORPORATIONS

Sections:

30.0205 Liquidation.

30.0201 Formation.

Any 3 or more persons of full age, a majority of whom shall be nationals of the United States, may incorporate themselves for the establishment of churches, colleges, seminaries, lyceums, libraries, fraternal lodges or societies, temperance societies, trade unions or other labor organizations, commercial clubs, associations of businessmen, agricultural societies, farmer's granges, or organizations of a benevolent, charitable, scientific, political, athletic, military, or religious character.

History: 1962, PL 7-20.

30.0202 Articles of incorporation-Contents-Filing.

(a) The incorporators shall adopt, sign, and acknowledge articles of incorporation stating the name by which the corporation shall be known, the location of its principal office or place of business, its business or objects, the number of trustees, directors, managers or other officers to conduct the same, the name thereof for the first year, the time of its annual meeting and annual meetings of its trustees or directors, and the manner in which the articles may be amended.

(b) The articles of incorporation must be filed with the Treasurer, who shall, if he approves the same, endorse his approval thereon and thereafter forward the same to the Territorial Registrar, who shall record them: and upon such recording, they must be returned to the corporation.

(c) The articles may not be filed by the Treasurer until a filing fee of $5 is paid, and upon the payment of the fee and the approval of the articles by the Treasurer, he shall issue to the corporation a certificate of incorporation as a corporation not for pecuniary profit.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0203 Articles of incorporation-Amendment.

Amendments to articles of incorporation may be filed and receive approval as provided in 30.0202 for articles, and the fee therefore shall be $5 in each instance, and no amendment may be effective until the same is approved and the fee therefor is paid.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0204 Corporate existence and powers.

(a) Upon filing of the articles, the persons signing and acknowledging the same, and their associates and successors, shall become a body corporate, with the name stated in the articles, and may sue and be sued.

(b) The corporation may have a corporate seal, alterable at its pleasure, may take by gift, purchase, devise or bequest, real and personal property for purposes appropriate to its creation, and may make bylaws. Notwithstanding the foregoing, any acquisitions of land or any interest therein subject to the restrictions and limitations prescribed by the provisions of 27.1510, 27.1411, and Title 37, and other applicable laws respecting land or interests therein.

(c) Corporations so organized shall exist perpetually unless a shorter period is fixed in the articles, by vote of all the members thereof, or by operation of law.

History: 1962, PL 7-20; 1968, PL 10-64; 1987, PL 20-30 § 1.

Amendments: 1987 Subsection (c) replaced "endure for 50 years" with "exist perpetually".

30.0205 Liquidation.

Upon the dissolution or winding up of an eleemosynary corporation, after paying or adequately providing for the debts and obligations of the corporation, the officers or persons in charge of the liquidation shall divide the remaining assets among the members in accordance with their respective rights therein. If the corporation holds its assets on any trust, such assets shall be disposed of in such manner as may be directed by the decree of the High Court of American Samoa upon petition filed for that purpose by the Attorney General or any party concerned in the liquidation.

History: 1962, PL 7-20; 1968, PL 10-64.

Chapter 03

FOREIGN CORPORATIONS

Sections:

30.0301 Application-Filing.

Any foreign business corporation which has transacted business in American Samoa since 1 January 1954, or desires hereafter to transact business in American Samoa, and which has not a permit to do such business, shall file with the Treasurer a certified copy of its articles of incorporation, duly attested by the Secretary of American Samoa or other officer in whose office the original articles were filed, accompanied by a resolution of its Board of Directors or stockholders authorizing the filing thereof and also authorizing service of process to be made upon any of its officers or agents in American Samoa engaged in transacting its business, and containing a statement verified by the oath of the president, vice-president, or other acting head, and the secretary of such foreign corporation and attested to by a majority of its board of directors or, if the Board of Directors consists of more than 5 members, by not less than 3 members of the Board of Directors, containing the information required in the articles of a newly formed corporation as set forth in 30.0111 through 30.0115, and requesting the issuance to such foreign corporation of a permit by the Governor to transact business in American Samoa.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0302 Application-Contents.

The application shall also contain a statement subscribed and sworn to by at least 2 of the principal officers of the corporation, setting forth the following:

(1) the total authorized capital of the corporation;

(2) the total paid-up capital of the corporation;

(3) the total value of all assets of the corporation, including money and property other than money represented by capital, surplus, undivided profits, bonds, promissory notes, certificates of indebtedness or other designation, whether carried as money on hand or in bank, real estate or personal property, of any description;

(4) the total value of money and all other property the corporation has in use or held as investment in American Samoa, at the time the statement is made, if any;

(5) the total value of money and all other property the corporation proposes or expects to make use of in American Samoa during the ensuing year;

(6) a certified copy of the resolution of the Board of Directors of the corporation giving the name and address in American Samoa of a resident agent on whom process directed to such corporation may be served.

History: 1962, PL 7-20: 1968, PL 10-64

30.0303 Application-Permit subject to other provisions.

The application for a permit to do business shall contain a stipulation that such permit shall be subject to all the provisions of (a) - (e) of 30.0101 and 30.0104, 30.0107, 30.0111, 30.0112, 30.0114, 30.0115, 30.0121, 30.0130, 30.0131, 30.0144, and 30.0301 through 30.0313. No other section of this title applies to a foreign corporation doing business in American Samoa unless specifically so provided by this title.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0304 Permit-Issuance.

The application must be forwarded to the Governor of American Samoa, via the Attorney General. If the Governor issues to such corporation a permit to transact business in American Samoa, a certified copy, together with the permit, must be forwarded to the Territorial Registrar to be recorded in a book kept therefore, and the Territorial Registrar shall endorse thereon the book and page where the record will be found.

History: 1962, PL 7-20; 1968, PL 10-64.

30.0305 Permit-Required.

No foreign corporation may transact any business in American Samoa without first procuring a permit from the Governor to do so. Any foreign corporation which has transacted business in American Samoa since 1 January 1954 may continue to do so for 4 months after the effective date of this chapter without a permit.

History: 1962, PL 7-20; 1968, PL 10-64.

Case Notes

Foreign corporation must procure a permit before transacting any business. ASG v. Salvage Pacific, Ltd. 1 A.S.R. 2d 98 (1983).

30.0306 Permit-To specify business.

The permit, if issued by the Governor, shall state specifically the business which the corpora-

tion may transact in American Samoa, and the corporation may transact no business in American Samoa other than that specified in the permit.

History: 1962, PL 7-20, 1968, PL 10-64.

30.0307 Permit-Forfeiture, revocation, or alteration.

A permit is at all times subject to forfeiture or revocation by the Governor for misuse or nonuse; and the permission to transact business contained in such permit may be decreased in scope, abridged or set aside by the Governor, or made subject to conditions imposed by him upon its enjoyment whenever he deems it necessary for the public good.

History: 1962, PL 7-20; 1968, PL 10-64

30.0308 Monetary requirements.

Every foreign corporation, in order to receive a permit to do business in American Samoa, must have at least $10,000 of authorized capital stock and $5,000 of paid-in capital stock.

History: 1962, PL 7-20

30.0309 Place of business.

No foreign corporation may transact any business in American Samoa without having one or more known places of business in the same.

History: 1962, PL 7-20

30.0310 Service of process.

If the agent required by paragraph (6) of 30.0302 cannot be found within American Samoa, service of process may be made upon the corporation through the Treasurer of American Samoa by sending the original and 2 copies to him, and on the original of which he shall accept service on behalf of the corporation. He shall retain one copy for his files and send the other by registered mail to the corporation at the address of its home office as shown by the records in his office, which service shall have the same force and effect as if lawfully made upon the corporation.

History: 1962, PL 7-20

30.0311 Investigations.

The Governor has power and authority to interrogate all foreign corporations, and the officers and agents thereof, applying to transact business in this territory, with respect to the character of business in which such corporations propose to engage in American Samoa, and with respect to any other matters required to be stated in applications for admission and such interrogatories must be answered under oath. Such interrogations and answers must be filed with the respective applications to which they pertain, and must operate as a limitation upon the authority of such corporations to transact business in this territory.

History: 1962, PL 7-20.

30.0312 Books of account-Inspection.

(a) Every foreign corporation duly authorized to transact business in American Samoa must keep at its principal place of business in American Samoa correct books of account of all its

business and transactions in American Samoa and of its business, its transactions, and its commerce between American Samoa and the United States, its territories, or possessions, and any foreign country. Every such foreign corporation is subject to the right of the government of American Samoa through its agents designated by the Governor or any person who must be a stock holder of record of any such foreign corporation to inspect such books of account and to make extracts therefrom.

(b) The intentional keeping of false books of account is a misdemeanor on the part of any officer, agent, or employee of the corporation guilty thereof, as of anyone whose duty it is to see that the books of account are correctly kept.

History: 1962, PL 7-20.

30.0313 Permit fees.

(a) Before a permit is issued authorizing a foreign corporation to transact business in American Samoa, the corporation shall pay a fee of $25 together with a recording fee of 25¢ per page upon $10,000 or less of money and property of such company actually within American Samoa, and of $1 for each $1,000 of such money or property within American Samoa in excess of $10,000 if the corporation has existence for a period of years.

(b) If the corporation has perpetual existence under its articles or charter, it shall make the filings as hereinbefore provided for and shall pay a fee of $100 together with a recording fee of 25¢ per page and a further fee of $1 for each $1,000 of such money or property within this territory in excess of $10,000, and thereafter shall periodically pay the fee every 20 years from the date of qualifications, and upon the failure to make such payments within 3 months from the date same are due, the Treasurer shall cancel the permit of the corporation.

History: 1962, PL 7-20.

30.0314 Violation of chapter-Penalty.

(a) Any foreign corporation that carries on its business in violation of the provisions of the sections enumerated on its permit to do business in American Samoa by its officers, agents, or otherwise, without having complied with the provisions of this chapter and having taken out and having a valid permit, shall forfeit and pay to the territory, for each and every day in which such business is transacted and carried on, the sum of $100 to be recovered by suit in any court having jurisdiction.

(b) Any agent, officer, or employee who transacts any business for such foreign corporation knowing that it has no valid permit, as required by this section, shall be guilty of a class C misdemeanor, and for such offense shall be sentenced accordingly, and pay all costs of prosecution.

History: 1962, PL 7-20, amd 1980, PL 16-90 § 40.

Amendments: 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

Chapter 04

(RESERVED)

Chapter 05

COOPERATIVE CORPORATIONS

Sections:

30.0501 Authority to organize.

A nonprofit cooperative corporation may be organized pursuant to this chapter for the purpose of providing services at cost to its members, on a basis of equality of control of the corporations' affairs.

History: 1962, PL 7-17.

30.0502 Operations-Limitations.

A nonprofit cooperative corporation may be incorporated in accordance with the provisions of chapters 01, 02, 03, and 05 of this title except that:

(a) Voting powers must be one vote for each member, regardless of stock ownership.

(b) Financial surpluses must be disposed of in accordance with the principle of services at cost to members after allowance of interest on capital at a reasonable rate and provision for prudent reserves.

(c) The name of the corporation must include the word "cooperative" in lieu of the words "corporation", "incorporated", or "limited''.

(d) The minimum limitation on authorized and paid-in capital stock does not apply.

(e) No dividends on capital stock may be declared.

History: 1962, PL 7-17.

CHAPTER 06

LIMITED LIABILITY COMPANY ACT

I. GENERAL PROVISIONS

Sections:

V. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

VI. DISSOCIATION

VII. DISSOLUTION AND WINDING UP

VIII. ACTIONS BY MEMBERS

IX. FOREIGN LIMITED LIABILITY COMPANIES

Reviser's comment: 2018, Section 1 of PL 35-20 created Chapter 06 in Title 30.

I. GENERAL PROVISIONS

30.0601 Short title.

This chapter may be cited as the "American Samoa Limited Liability Company Act".

History: 2018, PL 35-20.

30.0602 Definitions.

As used in this chapter:

(a) "Certificate of organization" means the certificate required by A.S.C.A 30.0622. The term includes the certificate as amended or restated.

(b) "Contribution", except in the phrase "right of contribution", means property or a benefit described in A.S.C.A. 30.0639 which is provided by a person to a limited liability company to become a member or in the person's capacity as a member.

(c) "Debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

(d) "Distribution" means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term includes:

(1) a redemption or other purchase by a limited liability company of a transferable interest; and

(2) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(3) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(e) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this territory which would be a limited liability company if formed under the law of this territory.

(f) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign county, or a political subdivision of a foreign country.

(g) “Jurisdiction of formation” means the jurisdiction whose law governs the internal affairs of an entity.

(h) “Limited liability company”, except in the phrase “foreign limited liability company” and in Chapter 7, means an entity formed under this chapter or which becomes subject to this chapter under Chapter 7 or A.S.C.A 30.0610.

(i) “Manager” means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in A.S.C.A. 30.0644(c).

(j) “Manager-managed limited liability company” means a limited liability company that qualifies under A.S.C.A. 30.0644(a).

(k) “Member” means a person that:

(1) has become a member of a limited liability company under A.S.C.A. 30.0638 or was a member in a company when the company became subject to this chapter under A.S.C.A. 30.0610; and

(2) has not dissociated under A.S.C.A. 30.0653.

(l) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(m) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in A.S.C.A. 30.0605(a). The term includes the agreement as amended or restated.

(n) “Organizer” means a person that acts under A.S.C.A. 30.0622 to form a limited liability company.

(o) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(p) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this territory.

(q) “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(r) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(s) “Registered agent” means an agent of a limited liability company or foreign limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.

(t) “Registered foreign limited liability company” means a foreign limited liability company that is registered to do business in this territory pursuant to a statement of registration filed by the Director of Treasury.

(u) “Sign” means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound, or process.

(v) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, American Samoa, or any territory or insular possession subject to the jurisdiction of the United States.

(w) “Transfer” includes:

(1) an assignment;
(2) a conveyance;
(3) a sale;
(4) a lease;
(5) an encumbrance, including a mortgage or security interest;
(6) a gift; and
(7) a transfer by operation of law.

(x) "Territory" shall mean the Territory of American Samoa.

(y) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(z) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under A.S.C.A 30.0654(a)(3).

History: 2018, PL 35-20.

30.0603 Knowledge—Notice.

(a) A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subsection (d)(1) or law other than this chapter.

(b) A person has notice of a fact if the person:

(1) has reason to know the fact from all the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subsection (d)(2).

(c) Subject to A.S.C.A. 30.0631(f), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(d) A person not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in A.S.C.A. 30.0635(g); and

(2) to have notice of a limited liability company's:

(A) dissolution 90 days after a statement of dissolution under A.S.C.A. 30.0656(b)(2)(A) becomes effective;

(B) termination 90 days after a statement of termination under A.S.C.A. 30.0656(b)(2)(F) becomes effective; and

(C) participation in a merger, interest exchange, conversion, or domestication, 90 days after articles of merger, interest exchange, conversion, or domestication under Title 30 Chapter 7 become effective.

History: 2018, PL 35-20.

30.0604 Governing law.

The law of this territory governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of a limited liability company.

History: 2018, PL 35-20.

30.0605 Operating agreement—Scope, function, and limitations.

(a) Except as otherwise provided in subsections (c) and (d), the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under Title 30 Chapter 6 and 7 of a person in the capacity of manager;

(3) the activities and affairs of the company and the conduct of those activities and affairs; and

(4) the means and conditions for amending the operating agreement.

(b) To the extent the operating agreement does not provide for a matter described in subsection (a), Title 30 Chapter 6 and 7 governs the matter.

(c) An operating agreement may not:

(1) vary the law applicable under A.S.C.A 30.0604;

(2) vary a limited liability company's capacity under A.S.C.A. 30.0609 to sue and be sued in its own name;

(3) vary any requirement, procedure, or other provision of Title 30 Chapters 6 and 7 pertaining to:

(A) registered agents; or

(B) the Treasurer, including provisions pertaining to records authorized or required to be delivered to the Treasurer for filing under Title 30 Chapters 6 and 7;

(4) vary the provisions of A.S.C.A. 30.0625;

(5) alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection (d);

(6) eliminate the contractual obligation of good faith and fair dealing under A.S.C.A. 30.0646(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(7) relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

(8) unreasonably restrict the duties and rights under A.S.C.A. 30.0647, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(9) vary the causes of dissolution specified in A.S.C.A. 30.0655(a)(4);

(10) vary the requirement to wind up the company's activities and affairs as specified in A.S.C.A. 30.0656(a), (b)(1), and (e);

(11) unreasonably restrict the right of a member to maintain an action under Article 8;

(12) vary the provisions of A.S.C.A. 30.0669, but the operating agreement may provide that the company may not have a special litigation committee;

(13) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under A.S.C.A. 30.0710(a)(2), 30.0716(a)(2), 30.0722(a)(2), or 30.0728(a)(2);

(14) vary the required contents of a plan of merger under A.S.C.A. 30.0709(a), plan of interest exchange under A.S.C.A. 30.0715(a), plan of conversion under A.S.C.A. 30.0721(a), or plan of domestication under A.S.C.A. 30.0727(a); or

(15) except as otherwise provided in A.S.C.A. 30.0606 and 30.0607(b), restrict the rights under Chapter 6 or 7 of Title 30 of a person other than a member or manager.

(d) Subject to subsection (c)(7), without limiting other terms that may be included in an operating agreement, the following rules apply:

(1) The operating agreement may:

(A) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

(B) alter the prohibition in A.S.C.A. 30.0642(a)(2) so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member otherwise would have under Chapter 6 or 7 of Title 30 and imposes the responsibility on one or more other members, the agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility which would have pertained to the responsibility.

(3) If not manifestly unreasonable, the operating agreement may:

(A) alter or eliminate the aspects of the duty of loyalty stated in A.S.C.A. 30.0646(b) and (i);

(B) identify specific types or categories of activities that do not violate the duty of loyalty;

(C) alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

(D) alter or eliminate any other fiduciary duty.

(e) The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under subsection (c)(6) or (d)(3). The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

(A) the objective of the term is unreasonable; or

(B) the term is an unreasonable means to achieve the term's objective.

History: 2018, PL 35-20.

30.0606 Operating agreement—Effect on limited liability company and person becoming member—Preformation agreement.

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

History: 2018, PL 35-20.

30.0607 Operating agreement—Effect on third parties and relationship to records effective on behalf of limited liability company.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under A.S.C.A. 30.0650(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(2) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(c) If a record delivered by a limited liability company to the Treasurer for filing becomes effective and contains a provision that would be ineffective under A.S.C.A. 30.0605(c) or (d)(3) if contained in the operating agreement, the provision is ineffective in the record.

(d) Subject to subsection (c), if a record delivered by a limited liability company to the Treasurer for filing becomes effective and conflicts with a provision of the operating agreement:

(1) the agreement prevails as to members, persons dissociated as members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

History: 2018, PL 35-20.

30.0608 Nature, purpose, and duration of limited liability company.

(a) A limited liability company is an entity distinct from its member or members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

History: 2018, PL 35-20.

30.0609 Powers.

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

History: 2018, PL 35-20.

30.0610 Fees.

(a) The Treasurer shall charge and collect fees from limited liability companies and foreign limited liability companies for:

(1) Filing the original articles of organization or issuing a certificate of authority for a foreign limited liability company, one hundred dollars $150.00;

(2) Filing the original articles of organization or issuing a certificate of authority for a foreign limited liability company, one hundred and seventy five dollars $175.00. If this filing option is elected, the annual report required under A.S.C.A. 30.0633 must still be submitted, however, the fee in A.S.C.A. 30.0610(a)(5) will be waived for the first annual report due the following year;

(3) Filing the original articles of organization or issuing a certificate of authority for a foreign limited liability company, two hundred dollars, $200.00. If this filing option is elected, the annual reports required under A.S.C.A. 30.0633 must still be submitted, however, the fee in A.S.C.A. 30.0610(a)(5) will be waived for the first and second annual reports due the following two years;

(4) For amending the articles of organization, a filing fee of fifty dollars $50.00;

(5) An annual fee of $50 accompanying the report required in A.S.C.A. 30.0633 due and payable on or before the date of the filing under A.S.C.A. 30.0633. If the options listed in A.S.C.A. 30.0610(a)(2) or (a)(3) are elected, then collection of the annual $50 fee will begin with submission of the second or third annual report, respectively;

(6) Filing, service and copying fees for those services provided by his office for which a fee is not otherwise established. A fee shall not exceed the cost of providing the service.

(b) Except for articles of organization, any document to be filed with the Treasurer shall be signed by the member, members, manager, managers or other authorized individual as set forth in the operating agreement. A person signing a document, including the articles of organization, he knows is false in any material respect with intent that the document be delivered to the Treasurer for filing under Chapter 6 or 7 of this Title is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars $1,000.00, by imprisonment for not more than six (6) months, or both.

(c) Any foreign limited liability company transacting business in this territory without registering to do business in this territory as required by A.S.C.A. 30.0673 is subject to the penalties provided by A.S.C.A. 30.0682 and 30.0314.

History: 2018, PL 35-20.

30.0611 Supplemental principles of law.

Unless displaced by particular provisions of Title 30 Chapters 6 and 7, the principles of law and equity supplement this Title 30 Chapters 6 and 7.

History: 2018, PL 35-20.

30.0612 Permitted names.

(a) The name of a limited liability company must contain the phrase “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

(b) Except as otherwise provided in subsection (d), the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in this Territory, must be distinguishable on the records of the Treasurer from any:

(1) name of an existing person whose formation required the filing of a record by the Treasurer and which is not at the time administratively dissolved;

(2) name of a limited liability partnership whose statement of qualification is in effect;

(3) name under which a person is registered to do business in this territory by the filing of a record by the Treasurer;

(4) name reserved under A.S.C.A. 30.0613 or other law of this territory providing for the reservation of a name by the filing of a record by the Treasurer

(5) name registered under A.S.C.A. 30.0614 or other law of this territory providing for the registration of a name by the filing of a record by the Treasurer.

(c) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the Treasurer to change its name to a name that is distinguishable on the records of the Treasurer from any name in any category of names in subsection (b), the name of the consenting person may be used by the person to which the consent was given.

(d) Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the Treasurer from the name of another person, words, phrases, or abbreviations indicating a type of person, such as “corporation”, “corp.”,

"incorporated", "Inc.", "professional corporation", "P.C.", "PC", "professional association", "P.A.", "PA", "Limited", "Ltd.", "limited partnership", "L.P.", "LP", "limited liability partnership", "L.L.P.", "LLP", "registered limited liability partnership", "R.L.L.P.", "RLLP", "limited liability limited partnership", "L.L.L.P.", "LLLP", "registered limited liability limited partnership", "R.L.L.L.P.", "RLLLP", "limited liability company", "L.L.C.", "LLC", "limited cooperative association", "limited cooperative", or "L.C.A.", or "LCA" may not be taken into account.

(e) A person may consent in a record to the use of a name that is not distinguishable on the records of the Treasurer from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in subsection (d). In such a case, the person need not change its name pursuant to subsection (c).

(f) The name of a limited liability company or foreign limited liability company may not contain lewd or offensive words.

(g) A limited liability company or foreign limited liability company may use a name that is not distinguishable from a name described in subsection (b)(1) through (6) if the company delivers to the Treasurer a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the company to use the name in this territory.

History: 2018, PL 35-20.

30.0613 Reservation of name.

(a) A person may reserve the exclusive use of a name that complies with A.S.C.A. 30.0612 by delivering an application to the Treasurer for filing. The application must state the name and address of the applicant and the name to be reserved. If the Treasurer finds that the name is available, the Treasurer shall reserve the name for the applicant's exclusive use for [180] days.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the Treasurer a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

History: 2018, PL 35-20.

30.0614 Registration of name.

(a) A foreign limited liability company not registered to do business in this territory under Section 9 may register its name, or an alternate name adopted pursuant to A.S.C.A. 30.0676, if the name is distinguishable on the records of the Treasurer from the names that are not available under A.S.C.A. 30.0612.

(b) To register its name or an alternate name adopted pursuant to A.S.C.A. 30.0676, a foreign limited liability company must deliver to the Treasurer for filing an application stating the company's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to A.S.C.A. 30.0676. If the Treasurer finds that the name applied for is available, the Treasurer shall register the name for the applicant's exclusive use.

(c) The registration of a name under this section is effective for one year after the date of registration.

(d) A foreign limited liability company whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the Treasurer for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(e) A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

History: 2018, PL 35-20.

30.0615 Registered agent.

(a) Each limited liability company and each registered foreign limited liability company shall designate and maintain a registered agent in this Territory. The designation of a registered agent is an affirmation of fact by the limited liability company or registered foreign limited liability company that the agent has consented to serve.

(b) A registered agent for a limited liability company or registered foreign limited liability company must have a place of business in this territory.

(c) The only duties under Title 30 Chapters 6 and 7 of a registered agent that has complied with Title 30 Chapters 6 and 7 are:

(1) to forward to the limited liability company or registered foreign limited liability company at the address most recently supplied to the agent by the company or foreign company any process, notice, or demand pertaining to the company or foreign company which is served on or received by the agent;

(2) if the registered agent resigns, to provide the notice required by A.S.C.A. 30.0617(c) to the company or foreign company at the address most recently supplied to the agent by the company or foreign company; and

(3) to keep current the information with respect to the agent in the certificate of organization or foreign registration statement.

History: 2018, PL 35-20.

30.0616 Change of registered agent or address for registered agent by limited liability company.

(a) A limited liability company or registered foreign limited liability company may change its registered agent or the address of its registered agent by delivering to the Treasurer for filing a statement of change that states:

(1) the name of the company or foreign company; and

(2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The members or managers of a limited liability company need not approve the delivery to the Treasurer a filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office, if any, of the company in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the limited liability company or registered foreign limited liability company that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a limited liability company may amend its certificate of organization.

History: 2018, PL 35-20.

30.0617 Resignation of registered agent.

(a) A registered agent may resign as an agent for a limited liability company or registered foreign limited liability company by delivering to the Treasurer for filing a statement of resignation that states:

(1) the name of the company or foreign company;

(2) the name of the agent;

(3) that the agent resigns from serving as registered agent for the company or foreign company; and

(4) the address of the company or foreign company to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of:

(1) the 31st day after the day on which it is filed by the Treasurer; or

(2) the designation of a new registered agent for the limited liability company or registered foreign limited liability company.

(c) A registered agent promptly shall furnish to the limited liability company or registered foreign limited liability company notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility under Title 30 Chapters 6 and 7 for any matter thereafter tendered to it as agent for the limited liability company or registered foreign limited liability company. The resignation does not affect any contractual rights the company or foreign company has against the agent or that the agent has against the company or foreign company.

(e) A registered agent may resign with respect to a limited liability company or registered foreign limited liability company whether or not the company or foreign company is in good standing.

History: 2018, PL 35-20.

30.0618 Change of name or address by registered agent.

(a) If a registered agent changes its name or address, the agent may deliver to the Treasurer for filing a statement of change that states:

(1) the name of the limited liability company or registered foreign limited liability company represented by the registered agent;

(2) the name of the agent as currently shown in the records of the Treasurer for the company or foreign company;

(3) if the name of the agent has changed, its new name; and

(4) if the address of the agent has changed, its new address.

(b) A registered agent promptly shall furnish notice to the represented limited liability company or registered foreign limited liability company of the filing by the Treasurer of the statement of change and the changes made by the statement.

History: 2018, PL 35-20.

30.0619 Service of process, notice, or demand.

(a) A limited liability company or registered foreign limited liability company may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a limited liability company or registered foreign limited liability company ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the company or foreign company may be served by registered or certified mail, return receipt

requested, or by similar commercial delivery service, addressed to the company or foreign company at its principal office. The address of the principal office must be as shown on the company's or foreign company's most recent annual report filed by the Treasurer. Service is effected under this subsection on the earliest of:

(1) the date the company or foreign company receives the mail or delivery by the commercial delivery service;

(2) the date shown on the return receipt, if signed by the company or foreign company; or

(3) five days after its deposit with the United States Postal Service, or with the commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on a limited liability company or registered foreign limited liability company pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the company or foreign company if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record.

(e) Service of process, notice, or demand may be made by other means under law other than those found in Title 30 Chapters 6 and 7.

History: 2018, PL 35-20.

30.0620 Delivery of record.

(a) Except as otherwise provided in Title 30 Chapters 6 and 7, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.

(b) Delivery to the Treasurer is effective only when a record is received by the Treasurer.

History: 2018, PL 35-20.

30.0621 Reservation of power to amend or repeal.

The legislature of this Territory has power to amend or repeal all or part of Title 30 Chapter 6 and 7 at any time, and all limited liability companies and foreign limited liability companies subject to these chapters are governed by the amendment or repeal.

History: 2018, PL 35-20.

II. FORMATION—CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

30.0622 Formation of limited liability company—Certificate of organization.

(a) One or more persons may act as organizers to form a limited liability company by delivering to the Treasurer for filing a certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with A.S.C.A. 30.0612;

(2) the street and mailing addresses of the company's principal office; and

(3) the name and mailing addresses in this Territory of the company's registered agent.

(c) A certificate of organization may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified in A.S.C.A. 30.0605(c) and (d) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.

(d) A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.

(e) In order to conduct business in the territory, a limited liability company must comply with all local laws, including, but not limited to, A.S.C.A. 27.0201 et. al.

History: 2018, PL 35-20.

30.0623 Amendment or restatement of certificate of organization.

(a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Treasurer for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its initial certificate; and

(3) the text of the amendment.

(c) To restate its certificate of organization, a limited liability company must deliver to the Treasurer for filing a restatement, designated as such in its heading.

(d) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Treasurer for filing a statement of change under A.S.C.A. 30.0616 or a statement of correction under A.S.C.A. 30.0630.

History: 2018, PL 35-20.

30.0624 Signing of records to be delivered for filing to Treasurer.

(a) A record delivered to the Treasurer for filing pursuant Title 30 Chapters 6 and 7 must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) and (3), a record signed by a limited liability company must be signed by a person authorized by the company.

(2) A company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A record delivered on behalf of a dissolved company that has no member must be signed by the person winding up the company's activities and affairs under A.S.C.A. 30.0656(c) or a person appointed under A.S.C.A. 30.0656(d) to wind up the activities and affairs.

(4) A statement of denial by a person under A.S.C.A. 30.0636 must be signed by that person.

(5) Any other record delivered on behalf of a person to the Treasurer for filing must be signed by that person.

(b) A record delivered for filing under Chapter 6 or 7 of Title 30 may be signed by an agent. Whenever Chapter 6 or 7 of Title 30 requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(c) A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.

History: 2018, PL 35-20.

30.0625 Signing and filing pursuant to judicial order.

(a) If a person required by Chapter 6 or 7 of this Title to sign a record or deliver a record to the Treasurer for filing under Chapter 6 or 7 does not do so, any other person that is aggrieved may petition the court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Treasurer for filing; or

(3) the Treasurer to file the record unsigned.

(b) If a petitioner under subsection (a) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company or foreign company a party to the action.

(c) A record filed under subsection (a)(3) is effective without being signed.

History: 2018, PL 35-20.

30.0626 Liability for inaccurate information in filed record.

(a) If a record delivered to the Treasurer for filing under Chapter 6 or 7 of this Title and filed by the Treasurer contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or a manager of a manager-managed limited liability company if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under A.S.C.A. 30.0623;

(ii) filed a petition under A.S.C.A. 30.0625; or

(iii) delivered to the Treasurer for filing a statement of change A.S.C.A. 30.0616 or a statement of correction under A.S.C.A. 30.0630.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Treasurer for filing under Chapter 6 or 7 of this Title and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under Chapter 6 or 7 of this Title affirms under penalty of perjury that the information stated in the record is accurate.

History: 2018, PL 35-20.

30.0627 Filing requirements.

(a) To be filed by the Treasurer pursuant to Chapter 6 or 7 of this Title, a record must be received by the Treasurer, comply with Chapter 6 or 7 of this Title, and satisfy the following:

(1) The filing of the record must be required or permitted by Chapter 6 or 7 of this Title.

(2) The record must be physically delivered in written form unless and to the extent the Treasurer permits electronic delivery of records.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The record must be signed by a person authorized or required under this act to sign the record.

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this act prohibits the disclosure by the Treasurer of information contained in a record delivered to the Treasurer for filing, the Treasurer shall file the record if the record otherwise complies with this act but may redact the information.

(c) When a record is delivered to the Treasurer for filing, any fee required under this act and any fee, tax, interest, or penalty required to be paid under this act or law other than this act must be paid in a manner permitted by the Treasurer or by that law.

(d) The Treasurer may require that a record delivered in written form be accompanied by an identical or conformed copy.

(e) The Treasurer may provide forms for filings required or permitted to be made by this act, but, except as otherwise provided in subsection (f), their use is not required.

(f) The Treasurer may require that a cover sheet for a filing be on a form prescribed by the Treasurer.

History: 2018, PL 35-20.

30.0628 Effective date and time.

Except as otherwise provided in A.S.C.A. 30.0629 and subject to A.S.C.A. 30.0630(d), a record filed under this act is effective:

(1) on the date and at the time of its filing by the Treasurer, as provided in A.S.C.A. 30.0631(b);

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under paragraph (1);

(3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

History: 2018, PL 35-20.

30.0629 Withdrawal of filed record before effectiveness.

(a) Except as otherwise provided in A.S.C.A. 30.0711, 30.0717, 30.0723, and 30.0729, a record delivered to the Treasurer for filing may be withdrawn before it takes effect by delivering to the Treasurer for filing a statement of withdrawal.

(b) A statement of withdrawal must:

(1) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) identify the record to be withdrawn; and

(3) if signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the Treasurer of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

History: 2018, PL 35-20.

30.0630 Correcting filed record.

(a) A person on whose behalf a filed record was delivered to the Treasurer for filing may correct the record if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the Treasurer was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the Treasurer must deliver to the Treasurer for filing a statement of correction.

(c) A statement of correction:

(1) may not state a delayed effective date;

(2) must be signed by the person correcting the filed record;

(3) must identify the filed record to be corrected;

(4) must specify the inaccuracy or defect to be corrected; and

(5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of A.S.C.A. 30.0603(d) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

History: 2018, PL 35-20.

30.0631 Duty of Treasurer to file—Review of refusal to file—Delivery of record by Treasurer.

(a) The Treasurer shall file a record delivered to the Treasurer for filing which satisfies this act. The duty of the Treasurer under this section is ministerial.

(b) When the Treasurer files a record, the Treasurer shall record it as filed on the date and at the time of its delivery. After filing a record, the Treasurer shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(c) If the Treasurer refuses to file a record, the Treasurer shall, not later than 15 business days after the record is delivered:

(1) return the record or notify the person that submitted the record of the refusal; and

(2) provide a brief explanation in a record of the reason for the refusal.

(d) If the Treasurer refuses to file a record, the person that submitted the record may petition the court to compel filing of the record. The record and the explanation of the Treasurer of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(e) The filing of or refusal to file a record does not:

(1) affect the validity or invalidity of the record in whole or in part; or

(2) create a presumption that the information contained in the record is correct or incorrect.

(f) Except as otherwise provided by A.S.C.A. 30.0619 or by other applicable law, the Treasurer may deliver any record to a person by delivering it:

(1) in person to the person that submitted it;
(2) to the address of the person's registered agent;
(3) to the principal office of the person; or
(4) to another address the person provides to the Treasury for delivery.

History: 2018, PL 35-20.

30.0632 Certificate of good standing or registration.

(a) On request of any person, the Treasurer shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company.

(b) A certificate under subsection (a) must state:

(1) the limited liability company's name or the registered foreign limited liability company's name used in this territory;

(2) in the case of a limited liability company:

(A) that a certificate of organization has been filed and has taken effect;

(B) the date the certificate became effective;

(C) the period of the company's duration if the records of the Treasurer reflect that its period of duration is less than perpetual and that:

(i) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;

(ii) the records of the Treasurer do not otherwise reflect that the company has been dissolved or terminated; and

(iii) a proceeding is not pending under A.S.C.A. 30.0662;

(3) in the case of a registered foreign limited liability company, that it is registered to do business in this territory;

(4) that all fees, taxes, interest, and penalties owed to this territory by the limited liability company or foreign limited liability company and collected through the Treasurer have been paid, if:

(A) payment is reflected in the records of the Treasurer; and

(B) nonpayment affects the good standing or registration of the company or foreign company;

(5) that the most recent annual report required by A.S.C.A. 30.0633 has been delivered to the Treasurer for filing; and

(6) other facts reflected in the records of the Treasurer pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the Treasurer under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

History: 2018, PL 35-20.

30.0633 Annual report for Treasurer.

(a) A limited liability company or registered foreign limited liability company shall deliver to the Treasurer for filing an annual report that states:

(1) the name of the company or foreign company;

(2) the name and mailing addresses of its registered agent in this territory;

(3) the street and mailing addresses of its principal office;

(4) if the company is member managed, the name of at least one member;

(5) if the company is manager managed, the name of at least one manager; and

(6) in the case of a foreign company, its jurisdiction of formation and any alternate name adopted under A.S.C.A. 30.0676(a).

(b) Information in the annual report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.

(c) The first annual report must be delivered to the Treasurer for filing after January 1 and before April 1 of the year following the calendar year in which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in this territory. Subsequent annual reports must be delivered to the Treasurer for filing after January 1 and before April 1 of each calendar year thereafter.

(d) If an annual report does not contain the information required by this section, the Treasurer promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.

(e) If an annual report contains the name or address of a registered agent which differs from the information shown in the records of the Treasurer immediately before the report becomes effective, the differing information in the report is considered a statement of change under A.S.C.A. 30.0616.

History: 2018, PL 35-20.

III. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

30.0634 No agency power of member as member.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than Chapter 6 and 7 of this Title from imposing liability on a limited liability company because of the person's conduct.

History: 2018, PL 35-20.

30.0635 Statement of Limited Liability Company authority.

(a) A limited liability company may deliver to the Treasurer for filing a statement of authority. The statement:

(1) must include the name of the company and the name and street and mailing addresses of its registered agent;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) sign an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) sign an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the Treasurer, a limited liability company must deliver to the Treasurer for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the name and street and mailing addresses of the company's registered agent;

(3) the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) and A.S.C.A. 30.0603(d), and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, a certified copy of which statement is recorded in the office of the Territorial Registrar, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office of the Territorial Registrar; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective, and a certified copy of the later-effective statement is recorded in the office of the Territorial Registrar.

(g) Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office of the Territorial Registrar, all persons are deemed to know of the limitation.

(h) Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the Treasurer for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of subsection (f)(1).

History: 2018, PL 35-20.

30.0636 Statement of denial.

(a) A person named in a filed statement of authority granting that person authority may deliver to the Treasurer for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

History: 2018, PL 35-20.

30.0637 Liability of members and managers.

(a) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.

(b) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, obligation, or other liability of the company.

History: 2018, PL 35-20.

IV. RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

30.0638 Becoming member.

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under Article 10 of Chapter 7;

(3) with the affirmative vote or consent of all the members; or

(4) as provided in A.S.C.A. 30.0655(a)(3).

(d) A person may become a member without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the limited liability company.

History: 2018, PL 35-20.

30.0639 Form of contribution.

A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

History: 2018, PL 35-20.

30.0640 Liability for contributions.

(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, termination, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.

(c) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

History: 2018, PL 35-20.

30.0641 Sharing of and right to distributions before dissolution.

(a) Any distribution made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under A.S.C.A. 30.0649 or charging order in effect under A.S.C.A. 30.0650.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 30.0670(d), a company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the company's obligation to make a distribution is subject to offset for any amount owed to the company by the member or a person dissociated as a member on whose account the distribution is made.

History: 2018, PL 35-20.

30.0642 Limitations on contributions.

(a) A limited liability company may not make a distribution, including a distribution under A.S.C.A. 30.0661, if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) in the case of a distribution as defined in A.S.C.A. 30.0602(4)(A), as of the earlier of:

(A) the date the money or other property is transferred or debt is incurred by the limited liability company; or

(B) the date the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under A.S.C.A. 30.0661, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under A.S.C.A. 30.0658, 30.0659, or 30.0660.

History: 2018, PL 35-20.

30.0643 Liability for improper distributions.

(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of A.S.C.A. 30.0642 and in consenting to the distribution fails to comply with A.S.C.A. 30.0646, the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of A.S.C.A. 30.0642.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of the authority and responsibility.

(c) A person that receives a distribution knowing that the distribution violated A.S.C.A. 30.0642 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under A.S.C.A. 30.0642.

(d) A person against which an action is commenced because the person is liable under subsection (a) may:

(1) implead any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred unless commenced not later than two years after the distribution.

History: 2018, PL 35-20.

30.0644 Management of Limited Liability Company.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be "manager-managed";

(B) the company is or will be "managed by managers"; or

(C) management of the company is or will be "vested in managers"; or

(2) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) Except as expressly provided in Chapter 6 or 7 of this Title, the management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities and affairs.

(3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

(4) The affirmative vote or consent of all the members is required to:

(A) undertake an act outside the ordinary course of the activities and affairs of the company; or

(B) amend the operating agreement.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as expressly provided in Chapter 6 or 7 of this Title, any matter relating to the activities and affairs of the company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(2) Each manager has equal rights in the management and conduct of the company's activities and affairs.

(3) The affirmative vote or consent of all members is required to:

(A) undertake an act outside the ordinary course of the company's activities and affairs; or

(B) amend the operating agreement.

(4) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(6) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the vote or consent of members under Chapter 6 or 7 of this Title may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(g) A payment or advance made by a member which gives rise to a limited liability company obligation under subsection (f) or A.S.C.A. 30.0645(a) constitutes a loan to the company which accrues interest from the date of the payment or advance.

(h) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

History: 2018, PL 35-20.

30.0645 Reimbursement—Indemnification—Advancement—Insurance.

(a) A limited liability company shall reimburse a member of a member-managed company or the manager of a manager-managed company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the company, if the member or manager complied with A.S.C.A. 30.0642, 30.0644, and 30.0646 in making the payment.

(b) A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of A.S.C.A. 30.0642, 30.0644, or 30.0646.

(c) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(d) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under A.S.C.A. 30.0605(c)(7), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

History: 2018, PL 35-20.

30.0646 Standards of conduct for members and managers.

(a) A member of a member-managed limited liability company owes to the company and, subject to A.S.C.A. 30.0665, the other members the duties of loyalty and care stated in subsections (b) and (c).

(b) The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and hold as trustee for any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities and affairs;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(c) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

(d) A member shall discharge the duties and obligations under Chapter 6 or 7 of this Title or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A member does not violate a duty or obligation under Chapter 6 or 7 of this Title or under the operating agreement solely because the member's conduct furthers the member's own interest.

(f) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(h) If, as permitted by subsection (f) or (i)(6) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(i) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (g) apply to the manager or managers and not the members.

(2) The duty stated under subsection (b)(3) continues until winding up is completed.

(3) Subsection (d) applies to managers and members.

(4) Subsection (e) applies only to members.

(5) The power to ratify under subsection (f) applies only to the members.

(6) Subject to subsection (d), a member does not have any duty to the company or to any other member solely by reason of being a member.

History: 2018, PL 35-20.

30.0647 Rights to information of member, manager, and person dissociated as member.

(a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the extent the

information is material to the member's rights and duties under the operating agreement or Chapter 6 or 7 of this Title.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or Chapter 6 or 7 of this Title, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, affairs, financial condition, and other circumstances, except to the extent the demand for the information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Not later than 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall inform in a record the member that made the demand of:

(A) what information the company will provide in response to the demand and when and where the company will provide the information; and

(B) the company's reasons for declining, if the company declines to provide any demanded information.

(4) Whenever Chapter 6 or 7 of this Title or an operating agreement provides for a member to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(c) Subject to subsection (h), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to the information to which the person was entitled while a member if:

(1) the information pertains to the period during which the person was a member;

(2) the person seeks the information in good faith; and

(3) the person satisfies the requirements imposed on a member by subsection (b)(2).

(d) A limited liability company shall respond to a demand made pursuant to subsection (c) in the manner provided in subsection (b)(3).

(e) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(f) A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (h) applies both to the agent or legal representative and to the member or person dissociated as a member.

(g) Subject to A.S.C.A. 30.0651, the rights under this section do not extend to a person as transferee.

(h) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

History: 2018, PL 35-20.

V. TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

30.0648 Nature of transferable interest.

A transferable interest is personal property.

History: 2018, PL 35-20.

30.0649 Transfer of transferable interest.

(a) Subject to A.S.C.A. 30.0650(f), a transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a person's dissociation as a member or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to A.S.C.A. 30.0651, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities and affairs; or

(B) except as otherwise provided in subsection (c), have access to records or other information concerning the company's activities and affairs.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by a limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company knows or has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Except as otherwise provided in A.S.C.A. 30.0653(5)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(h) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under A.S.C.A. 30.0640 and A.S.C.A. 30.0643 known to the transferee when the transferee becomes a member.

History: 2018, PL 35-20.

30.0650 Charging order.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in subsection (f), a charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in subsection (f), the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to A.S.C.A. 30.0649.

(d) At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;

(3) the purchaser thereby becomes a member; and

(4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) Neither Chapter 6 or 7 of this Title deprives any member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

(h) This section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member or transferee may satisfy the judgment from the judgment debtor's transferable interest.

History: 2018, PL 35-20.

30.0651 Power of legal representative of deceased member.

(a) If a member dies, the deceased member's legal representative may exercise:

(1) the rights of a transferee provided in A.S.C.A. 30.0649(c); and

(2) for the purposes of settling the estate, the rights the deceased member had under A.S.C.A. 30.0647.

History: 2018, PL 35-20.

VI. DISSOCIATION

30.0652 Power to dissociate as member—Wrongful dissociation.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under A.S.C.A. 30.0653(1).

(b) A person's dissociation as a member is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the completion of the winding up of the limited liability company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under A.S.C.A. 30.0653(6);

(C) the person is dissociated under A.S.C.A. 30.0653(8); or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to A.S.C.A. 30.0665, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the company or the other members.

History: 2018, PL 35-20.

30.0653 Events causing dissolution.

(a) A person is dissociated as a member when:

(1) the limited liability company knows or has notice of the person's express will to withdraw as a member, but, if the person has specified a withdrawal date later than the date the company knew or had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person's entire interest is transferred in a foreclosure sale under A.S.C.A. 30.0650(f);

(4) the person is expelled as a member pursuant to the operating agreement;

(5) the person is expelled as a member by the affirmative vote or consent of all the other members if:

(A) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(B) there has been a transfer of all the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under A.S.C.A. 30.0650 which has not been foreclosed;

(C) the person is an entity and:

(i) the company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) not later than 90 days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(6) on application by the limited liability company or a member in a direct action under A.S.C.A. 30.0665, the person is expelled as a member by judicial order because the person:

(A) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;

(B) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under A.S.C.A. 30.0646; or

(C) has engaged or is engaging in conduct relating to the company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

(7) in the case of an individual:

(A) the individual dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the individual is appointed; or

(ii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under Chapter 6 or 7 of this Title or the operating agreement;

(8) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) signs an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

(9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed;

(11) in the case of a person that is not an individual, the existence of the person terminates;

(12) the limited liability company participates in a merger under Chapter 7 and:

(A) the company is not the surviving entity; or

(B) otherwise as a result of the merger, the person ceases to be a member;

(13) the limited liability company participates in an interest exchange under Chapter 7 and, as a result of the interest exchange, the person ceases to be a member;

(14) the limited liability company participates in a conversion under Chapter 7;

(15) the limited liability company participates in a domestication under Chapter 7 and, as a result of the domestication, the person ceases to be a member; or

(16) the limited liability company dissolves and completes winding up.

History: 2018, PL 35-20.

30.0654 Effect of dissociation.

(a) If a person is dissociated as a member:

(1) the person's right to participate as a member in the management and conduct of the limited liability company's activities and affairs terminates;

(2) the person's duties and obligations under A.S.C.A. 30.0646 as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to A.S.C.A. 30.0651 and Chapter 7, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

History: 2018, PL 35-20.

VII. DISSOLUTION AND WINDING UP

30.0655 Events causing dissolution.

(a) A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the affirmative vote or consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members unless before the end of the period:

(A) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(B) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by the court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all the company's activities and affairs is unlawful;

(B) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(C) the managers or those members in control of the company:

(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(5) the signing and filing of a statement of administrative dissolution by the Treasurer under A.S.C.A. 30.0662.

(b) In a proceeding brought under subsection (a)(4)(C), the court may order a remedy other than dissolution.

History: 2018, PL 35-20.

30.0656 Winding up.

(a) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in A.S.C.A. 30.0657, the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, a limited liability company:

(1) shall discharge the company's debts, obligations, and other liabilities, settle and close the company's activities and affairs, and marshal and distribute the assets of the company and may:

(A) deliver to the Treasurer for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(B) preserve the company activities, affairs, and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the Treasurer for filing a statement of termination stating the name of the company and that the company is terminated; and

(G) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under A.S.C.A. 30.0644(c) and is deemed to be a manager for the purposes of A.S.C.A. 30.0637(a).

(d) If the legal representative under subsection (c) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under A.S.C.A. 30.0644(c) and is deemed to be a manager for the purposes of A.S.C.A.30.0637(a); and

(2) shall deliver promptly to the Treasurer for filing an amendment to the company's certificate of organization stating:

(A) that the company has no members;

(B) the name and street and mailing addresses of the person; and

(C) that the person has been appointed pursuant to this subsection to wind up the company.

(e) A court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) on the application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c); or

(3) in connection with a proceeding under A.S.C.A. 30.0655(a)(4).

History: 2018, PL 35-20.

30.0657 Rescinding dissolution.

(a) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company has become effective, a court has entered an order under A.S.C.A. 30.0655(a)(4) dissolving the company, or the Treasurer has dissolved the company under A.S.C.A. 30.0662.

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each member; and

(2) if the limited liability company has delivered to the Treasurer for filing a statement of dissolution and:

(A) the statement has not become effective, delivery to the Treasurer for filing of a statement of withdrawal under A.S.C.A. 30.0629 applicable to the statement of dissolution; or

(B) if the statement of dissolution has become effective, delivery to the Treasurer for filing of a statement of rescission stating the name of the company and that dissolution has been rescinded under this section.

(c) If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) subject to paragraph (3), any liability incurred by the company after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

History: 2018, PL 35-20.

30.0658 Known claims against dissolved limited liability company.

(a) Except as otherwise provided in subsection (d), a dissolved limited liability company may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim not later than 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

History: 2018, PL 35-20.

30.0659 Other claims against dissolved limited liability company.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the county in this Territory in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this territory, in the county in which the office of the company's registered agent is or was last located;

(2) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the company not later than three years after the publication date of the notice:

(1) a claimant that did not receive notice in a record under A.S.C.A. 30.0658;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or A.S.C.A. 30.0658 may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) except as otherwise provided in A.S.C.A. 30.0660, if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution.

History: 2018, PL 35-20.

30.0660 Court proceedings.

(a) A dissolved limited liability company that has published a notice under ASCA 30.0659 may file an application with the court in where the company's principal office is located or, if the principal office is not located in this territory, where the office of its registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the company and:

(1) at the time of application:

(A) are contingent; or

(B) have not been made known to the company; or

(2) are based on an event occurring after the date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under A.S.C.A. 30.0659.

(c) Not later than 10 days after the filing of an application under subsection (a), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

(d) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(e) A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (a) satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company, or are based on an event occurring after the date of dissolution, and such claims may not be enforced against a member or transferee on account of assets received in liquidation.

History: 2018, PL 35-20.

30.0661 Disposition of assets in winding up.

(a) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge the company's obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under A.S.C.A. 30.0650:

(1) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

(c) If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) must be paid in money.

History: 2018, PL 35-20.

30.0662 Administrative dissolution.

(a) The Treasurer may commence a proceeding under subsection (b) to dissolve a limited liability company administratively if the company does not:

(1) pay any fee, tax, interest, or penalty required to be paid to the Treasurer not later than six months after it is due;

(2) deliver an annual report to the Treasurer not later than six months after it is due; or

(3) have a registered agent in this territory for 60 consecutive days.

(b) If the Treasurer determines that one or more grounds exist for administratively dissolving a limited liability company, the Treasurer shall serve the company with notice in a record of the Treasurer's determination.

(c) If a limited liability company, not later than 60 days after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the Treasurer the nonexistence of each ground determined by the Treasurer, the Treasurer shall administratively dissolve the company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The Treasurer shall file the statement and serve a copy on the company pursuant to A.S.C.A. 30.0631.

(d) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under A.S.C.A. 30.0656, 30.0658, 30.0659, 30.0660, and 30.0661, or to apply for reinstatement under A.S.C.A. 30.0663.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

History: 2018, PL 35-20.

30.0663 Reinstatement.

(a) A limited liability company that is administratively dissolved under A.S.C.A. 30.0662 may apply to the Treasurer for reinstatement not later than two years after the effective date of dissolution. The application must state:

(1) the name of the company at the time of its administrative dissolution and, if needed, a different name that satisfies A.S.C.A. 30.0612;

(2) the address of the principal office of the company and the name and street and mailing addresses of its registered agent;

(3) the effective date of the company's administrative dissolution; and

(4) that the grounds for dissolution did not exist or have been cured.

(b) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the Treasurer at the time of the company's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the Treasurer while the company was administratively dissolved.

(c) If the Treasurer determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the Treasurer by subsection (b) have been made, the Treasurer shall:

(1) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the Treasurer's determination and the effective date of reinstatement; and

(2) file the statement of reinstatement and serve a copy on the limited liability company.

(d) When reinstatement under this section has become effective, the following rules apply:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(2) The limited liability company resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

(3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

History: 2018, PL 35-20.

30.0664 Judicial review of denial of reinstatement.

(a) If the Treasurer denies a limited liability company's application for reinstatement following administrative dissolution, the Treasurer shall serve the company with a notice in a record that explains the reasons for the denial.

(b) A limited liability company may seek judicial review of denial of reinstatement from the court not later than 30 days after service of the notice of denial.

History: 2018, PL 35-20.

VIII. ACTIONS BY MEMBERS

30.0665 Direct action by member.

(a) Subject to subsection (b), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or Chapter 6 or 7 of this Title, or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

History: 2018, PL 35-20.

30.0666 Derivative action.

(a) A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under paragraph (1) would be futile.

History: 2018, PL 35-20.

30.0667 Proper plaintiff.

(a) A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

(1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

History: 2018, PL 35-20.

30.0668 Pleading.

(a) In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(2) why demand should be excused as futile.

History: 2018, PL 35-20.

30.0669 Special litigation committee.

(a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(1) enforcing a person's right to information under A.S.C.A. 30.0647; or

(2) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the affirmative vote or consent of a majority of the members not named as parties in the proceeding; or

(B) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

(A) by a majority of the managers not named as parties in the proceeding; or

(B) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

History: 2018, PL 35-20.

30.0670 Proceeds and expenses.

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

(c) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

History: 2018, PL 35-20.

IX. FOREIGN LIMITED LIABILITY COMPANIES

30.0671 Governing law.

(a) The law of the jurisdiction of formation of a foreign limited liability company governs:

(1) the internal affairs of the company;

(2) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of the company; and

(3) the liability of a series of the company.

(b) A foreign limited liability company is not precluded from registering to do business in this territory because of any difference between the law of its jurisdiction of formation and the law of this territory.

(c) Registration of a foreign limited liability company to do business in this territory does not authorize the foreign company to engage in any activities and affairs or exercise any power that a limited liability company may not engage in or exercise in this territory.

(d) In order to conduct business in the territory, a foreign limited liability company must comply with all local laws, including, but not limited to, A.S.C.A. 27.0201 et. al.

History: 2018, PL 35-20.

30.0672 Registration to do business in this territory.

(a) A foreign limited liability company may not do business in this territory until it registers with the Treasurer under this article.

(b) A foreign limited liability company doing business in this territory may not maintain an action or proceeding in this territory unless it is registered to do business in this territory.

(c) The failure of a foreign limited liability company to register to do business in this territory does not impair the validity of a contract or act of the company or preclude it from defending an action or proceeding in this territory.

(d) A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the company does business in this territory without registering to do business in this territory.

(e) ASCA 30.0671(a) and (b) applies even if a foreign limited liability company fails to register under this article.

History: 2018, PL 35-20.

30.0673 Foreign registration statement.

(a) To register to do business in this territory, a foreign limited liability company must deliver a foreign registration statement to the Treasurer for filing. The statement must state:

(1) the name of the company and, if the name does not comply with A.S.C.A. 30.0612, an alternate name adopted pursuant to A.S.C.A. 30.0676(a);

(2) that the company is a foreign limited liability company;

(3) the company's jurisdiction of formation;

(4) the street and mailing addresses of the company's principal office and, if the law of the company's jurisdiction of formation requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(5) the name and mailing addresses of the company's registered agent in this territory.

History: 2018, PL 35-20.

30.0674 Amendment of foreign registration statement.

(a) A registered foreign limited liability company shall deliver to the Treasurer for filing an amendment to its foreign registration statement if there is a change in:

(1) the name of the company;

(2) the company's jurisdiction of formation;

(3) an address required by A.S.C.A. 30.0673(4); or

(4) the information required by A.S.C.A. 30.0673(5).

History: 2018, PL 35-20.

30.0675 Activities not constitution doing business.

(a) Activities of a foreign limited liability company which do not constitute doing business in this territory under this article include:

(1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the company or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders by any means if the orders require acceptance outside this territory before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in property;

(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;

(9) conducting an isolated transaction that is not in the course of similar transactions;

(10) owning, without more, property; and

(11) doing business in interstate commerce.

(b) A person does not do business in this territory solely by being a member or manager of a foreign limited liability company that does business in this territory.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this territory other than under Chapter 6 and 7 of this Title.

History: 2018, PL 35-20.

30.0676 Noncomplying name of foreign limited liability company.

(a) A foreign limited liability company whose name does not comply with A.S.C.A. 30.0612 may not register to do business in this territory until it adopts, for the purpose of doing business in this territory, an alternate name that complies with A.S.C.A. 30.0612. After registering to do business in this territory with an alternate name, a company shall do business in this territory under:

(1) the alternate name;

(2) the company's name, with the addition of its jurisdiction of formation; or

(3) a name the company is authorized to use under A.S.C.A 30.0612.

(b) If a registered foreign limited liability company changes its name to one that does not comply with A.S.C.A. 30.0612, it may not do business in this territory until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with A.S.C.A. 30.0612.

History: 2018, PL 35-20.

30.0677 Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

(a) A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the Treasurer for filing is deemed to have withdrawn its registration on the effective date of the conversion.

History: 2018, PL 35-20.

30.0678 Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.

(a) A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity whose formation does not require the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the Treasurer for filing. The statement must state:

(1) in the case of a company that has completed winding up:

(A) its name and jurisdiction of formation;

(B) that the company surrenders its registration to do business in this territory; and

(2) in the case of a company that has converted:

(A) the name of the converting company and its jurisdiction of formation;

(B) the type of entity to which the company has converted and its jurisdiction of formation;

(C) that the converted entity surrenders the converting company's registration to do business in this territory and revokes the authority of the converting company's registered agent to act as registered agent in this territory on behalf of the company or the converted entity; and

(D) a mailing address to which service of process may be made under subsection (b).

(b) After a withdrawal under this section has become effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this territory may be made pursuant to A.S.C.A. 30.0619.

History: 2018, PL 35-20.

30.0679 Transfer of registration.

(a) When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in this territory or has converted to a foreign entity required to register with the Treasurer to do business in this territory, the foreign entity shall deliver to the Treasurer for filing an application for transfer of registration. The application must state:

(1) the name of the registered foreign limited liability company before the merger or conversion;

(2) that before the merger or conversion the registration pertained to a foreign limited liability company;

(3) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted and, if the name does not comply with A.S.C.A. 30.0612, an alternate name adopted pursuant to A.S.C.A. 30.0676(a);

(4) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(5) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(6) the name and street and mailing addresses of the applicant foreign entity's registered agent in this territory.

(b) When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in this territory is transferred without interruption to the foreign entity into which the company has merged or to which it has been converted.

History: 2018, PL 35-20.

30.0680 Termination of registration.

(a) The Treasurer may terminate the registration of a registered foreign limited liability company in the manner provided in subsections (b) and (c) if the company does not:

(1) pay, not later than 60 days after the due date, any fee, tax, interest, or penalty required to be paid to the Treasurer under Chapter 6 or 7 of this Title or any other applicable law;

(2) deliver to the Treasurer for filing, not later than 60 days after the due date, an annual report required under A.S.C.A. 30.0633;

(3) have a registered agent as required by A.S.C.A. 30.0615; or

(4) deliver to the Treasurer for filing a statement of a change under A.S.C.A. 30.0616 not later than 30 days after a change has occurred in the name or address of the registered agent.

(b) The Treasurer may terminate the registration of a registered foreign limited liability company by:

(1) filing a notice of termination or noting the termination in the records of the Treasurer; and

(2) delivering a copy of the notice or the information in the notation to the company's registered agent or, if the company does not have a registered agent, to the company's principal office.

(c) The notice must state or the information in the notation must include:

(1) the effective date of the termination, which must be at least 60 days after the date the Treasurer delivers the copy; and

(2) the grounds for termination under subsection (a).

(d) The authority of a registered foreign limited liability company to do business in this territory ceases on the effective date of the notice of termination or notation under subsection (b), unless before that date the company cures each ground for termination stated in the notice or notation. If the company cures each ground, the Treasurer shall file a record so stating.

History: 2018, PL 35-20.

30.0681 Withdrawal of registration of registered foreign limited liability company.

(a) A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the Treasurer for filing. The statement of withdrawal must state:

(1) the name of the company and its jurisdiction of formation;

(2) that the company is not doing business in this territory and that it withdraws its registration to do business in this territory;

(3) that the company revokes the authority of its registered agent to accept service on its behalf in this territory; and

(4) an address to which service of process may be made under subsection (b).

(b) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the company was registered to do business in this territory may be made pursuant to A.S.C.A. 30.0619.

History: 2018, PL 35-20.

30.0682 Action by Attorney General.

The Attorney General may maintain an action to enjoin a foreign limited liability company from doing business in this territory in violation of this article.

History: 2018, PL 35-20.

CHAPTER 7

MERGER, INTEREST EXCHANGE, CONVERSION, AND DOMESTICATION

I. GENERAL PROVISIONS

Sections:

II. MERGER

III. INTEREST EXCHANGE

IV. CONVERSION

V. DOMESTICATION

VI. MISCELLANEOUS PROVISIONS

Reviser's comment: 2018, Section 1 of PL 35-20 created Chapter 07 in Title 30.

30.0701 Definitions.

In this chapter:

(1) "Acquired entity" means the entity, all of one or more classes or series of interests of which are acquired in an interest exchange.

(2) "Acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) "Conversion" means a transaction authorized by Part 4.

(4) "Converted entity" means the converting entity as it continues in existence after a conversion.

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to A.S.C.A. 30.0722 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(7) "Domestic", with respect to an entity, means governed as to its internal affairs by the law of this territory.

(8) "Domesticated limited liability company" means the domesticating limited liability company as it continues in existence after a domestication.

(9) "Domesticating limited liability company" means the domestic limited liability company that approves a plan of domestication pursuant to A.S.C.A. 30.0728 or the foreign limited liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) "Domestication" means a transaction authorized by Part 5.

(11) "Entity":

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

(vi) a general cooperative association;

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

(ix) a statutory trust, business trust, or common-law business trust; or

(x) any other person that has:

(I) a legal existence separate from any interest holder of that person; or

(II) the power to acquire an interest in real property in its own name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not an entity listed in subparagraph A and is not a partnership under the rules stated in Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2013) or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(13) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this territory.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for or consent to the election of the governors of the entity; or

(C) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(15) "Governor" means:

(A) a director of a business corporation;

(B) a director or trustee of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a manager of a manager-managed limited liability company;

(F) a member of a member-managed limited liability company;

(G) a director of a general cooperative association;

(H) a director of a limited cooperative association;

(I) a manager of an unincorporated nonprofit association;

(J) a trustee of a statutory trust, business trust, or common-law business trust; or

(K) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) "Interest" means:

(A) a share in a business corporation;

(B) a membership in a nonprofit corporation;

(C) a partnership interest in a general partnership;

(D) a partnership interest in a limited partnership;

(E) a membership interest in a limited liability company;

(F) a share in a general cooperative association;

(G) a member's interest in a limited cooperative association;

(H) a membership in an unincorporated nonprofit association;

(I) a beneficial interest in a statutory trust, business trust, or common-law business trust; or

(J) a governance interest or distributional interest in any other type of unincorporated entity.

(17) "Interest exchange" means a transaction authorized by Part 3.

(18) “Interest holder” means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

(G) a shareholder of a general cooperative association;

(H) a member of a limited cooperative association;

(I) a member of an unincorporated nonprofit association;

(J) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(K) any other direct holder of an interest.

(19) “Interest holder liability” means:

(A) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(20) “Merger” means a transaction authorized by Part 2.

(21) “Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective.

(22) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.

(23) “Organic rules” means the public organic record and private organic rules of an entity.

(24) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(25) “Plan of conversion” means a plan under A.S.C.A. 30.0721.

(26) “Plan of domestication” means a plan under A.S.C.A. 30.0727.

(27) “Plan of interest exchange” means a plan under A.S.C.A. 30.0715.

(28) “Plan of merger” means a plan under A.S.C.A. 30.0709.

(29) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;

(D) the partnership agreement of a limited partnership;

(E) the operating agreement of a limited liability company;

(F) the bylaws of a general cooperative association;

(G) the bylaws of a limited cooperative association;

(H) the governing principles of an unincorporated nonprofit association; and

(I) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(30) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date of chapter 6 and 7 of this Title;

(B) an agreement that is binding on an entity on the effective date of chapter 6 and 7 of this Title;

(C) the organic rules of an entity in effect on the effective date of Chapter 6 and 7 of this Title; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of Chapter 6 and 7 of this Title.

(31) "Public organic record" means the record the filing of which by the Treasurer is required to form an entity and any amendment to or restatement of that record. The term may include:

(A) the articles of incorporation of a business corporation;

(B) the articles of incorporation of a nonprofit corporation;

(C) the certificate of limited partnership of a limited partnership;

(D) the certificate of organization of a limited liability company;

(E) the articles of incorporation of a general cooperative association;

(F) the articles of organization of a limited cooperative association; and

(G) the certificate of trust of a statutory trust or similar record of a business trust.

(32) "Registered foreign entity" means a foreign entity that is registered to do business in this territory pursuant to a record filed by the Treasurer.

(33) "Statement of conversion" means a statement under A.S.C.A. 30.0724.

(34) "Statement of domestication" means a statement under A.S.C.A. 30.0730.

(35) "Statement of interest exchange" means a statement under A.S.C.A. 30.0718.

(36) "Statement of merger" means a statement under A.S.C.A. 30.0712.

(37) "Surviving entity" means the entity that continues in existence after or is created by a merger.

(38) "Type of entity" means a generic form of entity:

(A) recognized at common law; or

(B) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

History: 2018, PL 35-20.

30.0702 Relationship of Article to other laws.

(a) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(b) A transaction effected under this chapter may not create or impair a right, duty or obligation of a person under the statutory law of this territory other than this chapter relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating business corporation unless:

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the law; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

History: 2018, PL 35-20.

30.0703 Required notice or approval.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this territory to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this territory by a domestic or foreign entity immediately before a transaction under this article becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this territory concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the court specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to a merging entity that is not the surviving entity and which takes effect or remains payable after the merger inures to the surviving entity.

(d) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the surviving entity under this section.

History: 2018, PL 35-20.

30.0704 Nonexclusivity.

The fact that a transaction under this article produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this article.

History: 2018, PL 35-20.

30.0705 Reference to external facts.

A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

History: 2018, PL 35-20.

30.0706 Appraisal rights.

An interest holder of a domestic merging, acquired, converting, or domesticating limited liability company is entitled to contractual appraisal rights in connection with a transaction under this article to the extent provided in:

(1) the operating agreement; or

(2) the plan.

History: 2018, PL 35-20.

30.0707 RESERVED

History: 2018, PL 35-20.

II. MERGER

30.0708 Merger authorized.

(a) By complying with this part:

(1) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic limited liability company.

(b) By complying with the provisions of this part applicable to foreign entities, a foreign entity may be a party to a merger under this part or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

History: 2018, PL 35-20.

30.0709 Plan of merger.

(a) A domestic limited liability company may become a party to a merger under this part by approving a plan of merger. The plan must be in a record and contain:

(1) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(2) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to:

(A) its public organic record, if any; and

(B) its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger:

(A) its proposed public organic record, if any; and

(B) the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(b) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

History: 2018, PL 35-20.

30.0710 Approval of merger.

(a) A plan of merger is not effective unless it has been approved:

(1) by a domestic merging limited liability company, by all the members of the company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic merging limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

History: 2018, PL 35-20.

30.0711 Amendment or abandonment of plan of merger.

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging limited liability company may approve an amendment of a plan of merger:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(c) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after a statement of merger has been delivered to the Treasurer for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the Treasurer for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of each party to the plan of merger;

(2) the date on which the statement of merger was filed by the Treasurer; and

(3) a statement that the merger has been abandoned in accordance with this section.

History: 2018, PL 35-20.

30.0712 Statement of merger—Effective date of merger.

(a) A statement of merger must be signed by each merging entity and delivered to the Treasurer for filing.

(b) A statement of merger must contain:

(1) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of formation, and type of entity of the surviving entity;

(3) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this part and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(4) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(5) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment; and

(6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this territory, except that the public organic record does not need to be signed.

(e) A plan of merger that is signed by all the merging entities and meets all the requirements of subsection (b) may be delivered to the Treasurer for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this article to a statement of merger refer to the plan of merger filed under this subsection.

(f) If the surviving entity is a domestic limited liability company, the merger becomes effective when the statement of merger is effective. In all other cases, the merger becomes effective on the later of:

(1) the date and time provided by the organic law of the surviving entity; and

(2) when the statement is effective.

History: 2018, PL 35-20.

30.0713 Effect of merger.

(a) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(5) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all its property continues to be vested in it without transfer, reversion, or impairment;

(B) it remains subject to all its debts, obligations, and other liabilities; and

(C) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic record, if any, is amended to the extent provided in the statement of merger; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger, its private organic rules are effective and:

(A) if it is a filing entity, its public organic record becomes effective; and

(B) if it is a limited liability partnership, its statement of qualification becomes effective; and

(10) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under A.S.C.A. 30.0706 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The merger does not discharge any interest holder liability under Chapter 6 or 7 of this Title to the extent the interest holder liability was incurred before the merger became effective.

(2) The person does not have interest holder liability under Chapter 6 or 7 of this Title for any debt, obligation, or other liability that is incurred after the merger becomes effective.

(3) Chapter 6 and 7 of this Title continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by Chapter 6 or 7 of this Title, other applicable law, or the operating agreement of the domestic merging limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this territory for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited liability company as provided in A.S.C.A. 30.0619.

(f) When a merger becomes effective, the registration to do business in this territory of any foreign merging entity that is not the surviving entity is canceled.

History: 2018, PL 35-20.

III. INTEREST EXCHANGE

30.0714 Interest exchange authorized.

(a) By complying with this part:

(1) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic entity or a foreign entity in exchange for interests, securities,

obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(b) By complying with the provisions of this part applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this part if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after the effective date of Chapter 6 and 7 of this Title.

History: 2018, PL 35-20.

30.0715 Plan of interest exchange.

(a) A domestic limited liability company may be the acquired entity in an interest exchange under this part by approving a plan of interest exchange. The plan must be in a record and contain:

(1) the name of the acquired entity;

(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) any proposed amendments to:

(A) the certificate of organization of the acquired entity; and

(B) the operating agreement of the acquired entity that are, or are proposed to be, in a record;

(5) the other terms and conditions of the interest exchange; and

(6) any other provision required by the law of this territory or the operating agreement of the acquired entity.

(b) In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.

History: 2018, PL 35-20.

30.0716 Approval of interest exchange.

(a) A plan of interest exchange is not effective unless it has been approved:

(1) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the interest exchange becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(b) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.

(c) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(d) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

History: 2018, PL 35-20.

30.0717 Amendment or abandonment of plan of interest exchange.

(a) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the acquired company under the plan;

(B) the certificate of organization or operating agreement of the acquired company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired company under Chapter 6 or 7 of this Title or the operating agreement; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(c) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.

(d) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the Treasurer for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the Treasurer for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired company;

(2) the date on which the statement of interest exchange was filed by the Treasurer; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

History: 2018, PL 35-20.

30.0718 Statement of interest exchange—Effective date of interest exchange.

(a) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the Treasurer for filing.

(b) A statement of interest exchange must contain:

(1) the name of the acquired limited liability company;

(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) a statement that the plan of interest exchange was approved by the acquired company in accordance with this part; and

(4) any amendments to the acquired company's certificate of organization approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all the requirements of subsection (b) may be delivered to the Treasurer for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this article to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) An interest exchange becomes effective when the statement of interest exchange is effective.

History: 2018, PL 35-20.

30.0719 Effect of interest exchange.

(a) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

(1) the interests in the acquired company which are the subject of the interest exchange are converted, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under A.S.C.A. 30.0706;

(2) the acquiring entity becomes the interest holder of the interests in the acquired company stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) the certificate of organization of the acquired company is amended to the extent provided in the statement of interest exchange; and

(4) the provisions of the operating agreement of the acquired company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(b) Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired company.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The interest exchange does not discharge any interest holder liability under Chapter 6 or 7 of this Title to the extent the interest holder liability was incurred before the interest exchange became effective.

(2) The person does not have interest holder liability under Chapter 6 or 7 of this Title for any debt, obligation, or other liability that is incurred after the interest exchange becomes effective.

(3) Chapter 6 and 7 of this Title continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by Chapter 6 or 7 of this Title, other applicable law, or the operating agreement of the acquired company with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

History: 2018, PL 35-20.

IV. CONVERSION

30.0720 Conversion authorized.

(a) By complying with this part, a domestic limited liability company may become:

(1) a domestic entity that is a different type of entity; or

(2) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of this part applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the company as if the conversion were a merger until the provision is amended after the effective date of Chapter 6 and 7 of this Title.

History: 2018, PL 35-20.

30.0721 Plan of conversion.

(a) A domestic limited liability company may convert to a different type of entity under this part by approving a plan of conversion. The plan must be in a record and contain:

(1) the name of the converting limited liability company;

(2) the name, jurisdiction of formation, and type of entity of the converted entity;

(3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed public organic record of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity which are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of this Territory or the operating agreement of the converting limited liability company.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

History: 2018, PL 35-20.

30.0722 Approval of conversion.

(a) A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic converting limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of a conversion or a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

History: 2018, PL 35-20.

30.0723 Amendment or abandonment of plan of conversion.

(a) A plan of conversion of a domestic converting limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the converting company under the plan;

(B) the public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(b) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Treasurer for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the Treasurer for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting limited liability company;

(2) the date on which the statement of conversion was filed by the Treasurer; and

(3) a statement that the conversion has been abandoned in accordance with this section.

History: 2018, PL 35-20.

30.0724 Statement of conversion—Effective date of conversion.

(a) A statement of conversion must be signed by the converting entity and delivered to the Treasurer for filing.

(b) A statement of conversion must contain:

(1) the name, jurisdiction of formation, and type of entity of the converting entity;

(2) the name, jurisdiction of formation, and type of entity of the converted entity;

(3) if the converting entity is a domestic limited liability company, a statement that the plan of conversion was approved in accordance with this part or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, its public organic record, as an attachment; and

(5) if the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this territory, except that the public organic record does not need to be signed.

(e) A plan of conversion that is signed by a domestic converting limited liability company and meets all the requirements of subsection (b) may be delivered to the Treasurer for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this article to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) If the converted entity is a domestic limited liability company, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:

(1) the date and time provided by the organic law of the converted entity; and

(2) when the statement is effective.

History: 2018, PL 35-20.

30.0725 Effect of conversion.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity; and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) the certificate of organization of the converted entity becomes effective;

(7) the provisions of the operating agreement of the converted entity which are to be in a record, if any, approved as part of the plan of conversion become effective; and

(8) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under A.S.C.A. 30.0706.

(b) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under Chapter 6 or 7 of this Title to the extent the interest holder liability was incurred before the conversion became effective;

(2) The person does not have interest holder liability under Chapter 6 or 7 of this Title for any debt, obligation, or other liability that arises after the conversion becomes effective.

(3) Chapter 6 and 7 of this Title continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by Chapter 6 or 7 of this Title, other applicable law, or the organic rules of the converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this territory for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in A.S.C.A. 30.0619.

(f) If the converting entity is a registered foreign entity, its registration to do business in this territory is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

History: 2018, PL 35-20.

V. DOMESTICATION

30.0726 Domestication authorized.

(a) By complying with this part, a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this part applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication

of the limited liability company as if the domestication were a merger until the provision is amended after the effective date of Chapter 6 and 7 of this Title.

History: 2018, PL 35-20.

30.0727 Plan of domestication.

(a) A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) the name of the domesticating limited liability company;

(2) the name and jurisdiction of formation of the domesticated limited liability company;

(3) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed certificate of organization of the domesticated limited liability company;

(5) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this Territory or the operating agreement of the domesticating limited liability company.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

History: 2018, PL 35-20.

30.0728 Approval of domestication.

(a) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:

(1) by all the members entitled to vote on or consent to any matter; and

(2) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the domestication becomes effective, unless:

(A) the operating agreement of the domesticating company in a record provides for the approval of a domestication or merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

History: 2018, PL 35-20.

30.0729 Amendment or abandonment of plan of domestication.

(a) A plan of domestication of a domestic domesticating limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the domesticating limited liability company under the plan;

(B) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the members of the domesticated limited liability company under its organic law or operating agreement; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability company may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the Treasurer for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the Treasurer for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating limited liability company;

(2) the date on which the statement of domestication was filed by the Treasurer; and

(3) a statement that the domestication has been abandoned in accordance with this section.

History: 2018, PL 35-20.

30.0730 Statement of domestication—Effective date of domestication.

(a) A statement of domestication must be signed by the domesticating limited liability company and delivered to the Treasurer for filing.

(b) A statement of domestication must contain:

(1) the name and jurisdiction of formation of the domesticating limited liability company;

(2) the name and jurisdiction of formation of the domesticated limited liability company;

(3) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with this part or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation; and

(4) the certificate of organization of the domesticated limited liability company, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) The certificate of organization of a domestic domesticated limited liability company must satisfy the requirements of Chapter 6 and 7 of this Title, but the certificate does not need to be signed.

(e) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all the requirements of subsection (b) may be delivered to the Treasurer for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this article to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) If the domesticated entity is a domestic limited liability company, the domestication becomes effective when the statement of domestication is effective. If the domesticated entity is a foreign limited liability company, the domestication becomes effective on the later of:

(1) the date and time provided by the organic law of the domesticated entity; and

(2) when the statement is effective.

History: 2018, PL 35-20.

30.0731 Effect of domestication.

(a) When a domestication becomes effective:

(1) the domesticated entity is:

(A) organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating entity;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) the certificate of organization of the domesticated entity becomes effective;

(7) the provisions of the operating agreement of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication become effective; and

(8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the members of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under A.S.C.A. 30.0706.

(b) Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating company.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes subject to interest holder liability with respect to a domestic company as a result of the domestication has interest holder liability only to the extent provided by Chapter 6 or 7 of this Title and only for those debts, obligations, and other liabilities that are incurred after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under Chapter 6 or 7 of this Title to the extent the interest holder liability was incurred before the domestication became effective.

(2) A person does not have interest holder liability under Chapter 6 or 7 of this Title for any debt, obligation, or other liability that is incurred after the domestication becomes effective.

(3) Chapter 6 and 7 of this Title continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by Chapter 6 or 7 of this Title, other applicable law, or the operating agreement of the domestic domesticating limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign limited liability company that is the domesticated company may be served with process in this territory for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in A.S.C.A. 30.0619.

(f) If the domesticating limited liability company is a registered foreign entity, the registration of the company is canceled when the domestication becomes effective.

(g) A domestication does not require a domestic domesticating limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.

History: 2018, PL 35-20.

VI. MISCELLANEOUS PROVISIONS

30.0732 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2018, PL 35-20.

30.0733 Relation to electronic signatures in global and national commerce act.

Chapter 6 and 7 of this Title modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History: 2018, PL 35-20.

30.0734 Savings clause.

Chapter 6 and 7 of this Title does not affect an action commenced, proceeding brought, or right accrued before Chapter 6 and 7 of this Title take effect.

History: 2018, PL 35-20.

30.0735 Severability clause.

If any provision of Chapter 6 or 7 of this Title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of Chapter 6 or 7 which can be given effect without the invalid provision or application, and to this end the provisions of Chapter 6 and 7 of this Title are severable.

History: 2018, PL 35-20.

30.0736 Effective date.

Chapter 6 and 7 of this Title takes effect on January 1, 2018.

History: 2018, PL 35-20.